



# California Fair Political Practices Commission

October 13, 1992

Sandra Glackin  
Analyst, Care Unit  
Department of Health Services  
714/744 P Street  
P.O. Box 942732  
Sacramento, CA 94234-7320

Re: Your Request for Informal Assistance  
Our File No. I-92-265b

Dear Ms. Glackin:

This is in response to your letter requesting advice regarding the responsibilities of members of various Human Immunodeficiency Virus (HIV) Care Consortia (consortia) under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Since your advice request does not refer to a specific governmental decision, we are treating your request as one for informal assistance.<sup>2/</sup>

Your letter consisted of two separate issues. In our earlier response to you, it was determined that members of the consortia are "public officials" subject to the disqualification provisions of the Act (Advice Letter No. I-92-265a). This letter will provide guidance on creating the conflict of interest code which will govern the disclosure responsibilities of members of the consortia.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

What is a conflict of interest code?

A conflict of interest code is a set of rules or regulations created by an agency which specifically enumerates who, within the agency, makes or participates in the making of decisions, and further which sets out the types of financial interests which must be disclosed by those designated positions. The types of investments, income, business positions or real property which must be disclosed are those types which the designated position can affect in his or her decisionmaking. (Sections 87300-87302.)

More specifically, a conflict of interest code is comprised of three components. The first component is an appendix of designated positions. These are the positions within each consortia which make or participate in the making of decisions, i.e., its members, executive officer, consultants, etc. The second component is the appendix of disclosure categories. Disclosure categories describe the types of financial interests which must be disclosed.

For example, the members of the consortia make decisions regarding the distribution of funds for care and treatment of persons with HIV disease. The potential for a conflict would lie with any member who had a financial interest in any person or entity who is the recipient of such funds. The disclosure categories should, thus, require the disclosure of investments and business positions in, and income from, any entity or person which is the recipient of funds from the consortia, or is of the type to contract with the consortia to provide services of the type utilized by the consortia, including but not limited to local nonprofit agencies, community-based organizations, home health agencies, hospices, AIDS foundations, dentists, physicians, mental health providers, etc.

The final component is the "body" of the code. The "body" contains the provisions required by Section 87302 to be an agency's code, such as the manner to file statements, the times and circumstances when statements must be filed, the manner of disqualification, etc. An agency can create this information on its own, and hope that it is accurate, or in the alternative, it can incorporate Commission Regulation 18730 as the "body" of its code. Regulation 18730 contains all of the provisions required by Section 87302.

A suggested conflict of interest code is attached. You will note that we have incorporated Commission Regulation 18730 as the "body" of the code. We have also set out the minimum language needed for the disclosure category. A consortia may need to build on this disclosure language to obtain disclosure of all potential conflicts.

Once a conflict of interest code is created by each consortia, the code must be submitted to the consortia's respective code reviewing body. The code reviewing body has the ultimate authority to approve a code, disapprove a code, or amend a code and approve it as it has amended. (Section 87303.) A conflict of interest code is not effective until it has been approved by the code reviewing body.

The code reviewing body for a consortia located solely within the jurisdiction of a single county, is that county's board of supervisors. The code reviewing body for a consortia with jurisdiction in more than one county, is the Fair Political Practices Commission. While the Commission has established procedures which multi-county agencies must follow to adopt a code, it does not establish the procedures which the single-county consortia must follow. Such single county agency must contact its respective code reviewing body for guidance on what formal procedures, if any, must be followed to develop its code.

The procedural regulation which multi-county agencies must follow is attached. We have also included fact sheets which describe the process.

If, after you have reviewed all of this material you need to discuss it further, please feel free to give me a call at (916) 322-5901. It may be helpful to set up a meeting to review this further.

Sincerely,

Jeanette E. Turvill  
Political Reform Consultant  
Legal Division

JET/jt  
Enclosures

CONFLICT OF INTEREST CODE FOR THE

(Fill in name of respective consortia)

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard conflict of interest code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments to the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the conflict of interest code of the (Name of the consortia).

Designated employees shall file their statements of economic interests with the (name of consortia or place where statements will be filed).

APPENDIX OF DESIGNATED EMPLOYEES  
AND DISCLOSURE CATEGORIES

<u>Designated Positions</u>	<u>Assigned Disclosure Categories</u>
Members and Alternates	1 and 2
Chief Executive Officer	1 and 2
Consultants*	*

DISCLOSURE CATEGORIES

1. All investments and business positions in business entities, and income from entities or persons who may be the recipient of funds from the consortia, or is of the type to contract with the consortia, to provide services of the type utilized by the consortia, including but not limited to community-based organizations, home health agencies, hospices, AIDS foundations, dentists, physicians, mental health providers, etc.

2. All business positions in and income from nonprofit entities which may be the recipient of funds from the consortia, or is of the type to contract with the consortia, to provide services of the type utilized by the consortia, including but not limited to community-based organizations, home health agencies, hospices, AIDS foundations, dentists, physicians, mental health providers, etc.

\*The chief executive officer of the consortia may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The chief executive officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.