



# California Fair Political Practices Commission

April 3, 1992

Honorable Bill Filante, M.D.  
California Legislature, Ninth District  
State Capitol  
P. O. Box 942849  
Sacramento, CA 94249-0001

Re: Your Request for Advice  
Our File No. A-92-141

Dear Assemblyman Filante:

This letter is in response to your request for advice concerning your duties under the provisions of the Political Reform Act (the "Act").<sup>1</sup>

## QUESTION

Do the provisions of the Act prohibit your receipt of a payment from a group of companies manufacturing pharmaceuticals, diagnostic equipment, and various medical supplies to speak on the subject of health care reform?

## CONCLUSION

The provisions of the Act prohibit your receipt of a payment from a group of companies manufacturing pharmaceuticals, diagnostic equipment and various medical supplies to speak on the subject of health care reform unless the payment would constitute earned income for personal services which are customarily provided in connection with the practice of your profession.

## FACTS

You are an assemblyman for the ninth district. You are also a physician on the clinical staff at the University of California,

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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.

San Francisco. In addition, you maintain a part-time medical practice in Sacramento.

A group comprised of various companies engaged in the manufacturing of pharmaceuticals, diagnostic equipment, and various medical supplies has requested that you speak to their organization regarding healthcare reform. You seek our advice to determine whether, under the provisions of the Act, you are prohibited from accepting honoraria from this organization.

#### ANALYSIS

Effective January 1, 1991, the Legislature enacted a series of statutes that ban receipt of honoraria by public officials. The prohibitions apply regardless of whether the honorarium is received for a speech which relates to the individual's official duties. (Esgro Advice Letter, No. I-91-339.) As an assemblyman, you are a public official. (Section 82048.) You are thus prohibited from accepting honoraria, as that term is defined in the Act.

#### Honoraria

The Act defines an "honorarium as follows:

(b) "Honorarium" means, except as provided in subdivision (c), any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

(c) "Honorarium" does not include earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches. The commission shall adopt regulations to implement this subdivision.

Section 89502(b) and (c). (Emphasis added.)

Accordingly, a payment for a speech given is a prohibited honorarium. However, Subdivision (c) of Section 89503 exempts from the definition of honorarium earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession such as practicing medicine.

The Commission has enacted regulations to clarify the statutory provisions. For example, Regulation 18931 defines the term "honorarium" as follows:

Except as provided in Government Code Section 89502(c) and California Code of Regulations, Title 2, Sections 18932 through 18932.5, "honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

Regulation 18931.

Regulation 18931.1 defines a "speech given" as follows:

For purposes of Government Code Sections 89501, 89502(b), 89503(b) and 89506(a)(1), "speech given" means a public address, orations, or other form of oral presentation, and includes participation in a panel, seminar, or debate. A "speech given" does not include a comedic, dramatic, musical, or other similar artistic performance.

Pursuant to these statutory provisions, any payment received for making a speech would be a prohibited honorarium unless the payment constitutes "earned income" and is thus an exception to the term "honorarium."

Earned Income

"Earned income" means income from wages, salaries, professional fees, and other amounts received or promised to be received as compensation for personal services rendered. (Section 82030.5.) Income earned for providing personal services which are "customarily provided in connection with a bona fide business, trade or profession" is specifically exempted from the scope of the honoraria prohibitions. However, the exception provided in Section 89502(c) does not apply when the sole or predominant activity of the business, trade or profession is making "speeches." (Herman Advice Letter, No. I-91-557.)

Regulation 18932 provides that the term "honorarium" does not include income earned for personal services if:

(1) The services are provided in connection with an individual's business or the individual's practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, pursuant to California Code of Regulations, Title 2, Section 18932.1 through 18932.3; and

(2) The services are customarily provided in connection with the business, trade, or profession.

(b) For purposes of Government Code Sections 89501, 89502, 89503, and this section, a nonprofit entity may be a "business."

Regulation 18932(a).

Accordingly, a speech may fall within the exception of Section 89502(c), provided it is made in connection with the practice of a bona fide business, trade or profession and the "predominant activity" of such business, trade or profession is not making speeches.

#### Predominant Activity

Regulation 18932.3 defines what constitutes a "predominant activity" in the conduct of a business, trade or profession. The regulation distinguishes between a business, trade or profession that has been in existence for one year or more, and one that has been in existence for less than one year. The regulation states that for a business, trade or profession that has been in existence for one year or more, speechmaking is a predominant activity if, during the 12-month period prior to the speech, more than 50-percent of the hours spent in the business, trade or profession are devoted to the delivery of speeches or more than 50-percent of the gross income during the period is derived from speechmaking.

We have previously advised that income earned by an individual covered by the honoraria provisions from the practice of making speeches, such as a speakers' panel, is deemed to be an honorarium. (Watson Advice Letter, No. I-90-742.) In addition, we have advised that activities as a professional speaker clearly fall within the general definitions of activities covered by the honoraria prohibitions. (Miller, supra.) Thus, if you are a member of a speakers' bureau, or if you are earning income as a professional speaker, a payment received in connection with those activities would constitute a prohibited honorarium.

Your contemplated activities may be analyzed as activities in connection with the practice of a bona fide profession. Your facts indicate that you are a physician and are engaged in the practice of medicine both at the University of California, San Francisco and as a sole practitioner in Sacramento. For the limited exception to honoraria contained in Regulation 18932, payments for services which are customarily provided in connection with the practice of your profession would not constitute prohibited honoraria even if the services were rendered in the form of a speech.

It is not unusual for medical practitioners to address various groups on subjects related to their profession. For example, as a member of the clinical staff at the University of California, San Francisco, you may have acquired specialized information on areas of your practice which would be of interest to other practicing physicians. If you made a speech on any such topic and received a payment, such payment would be exempted from the definition of honorarium and would not be prohibited.

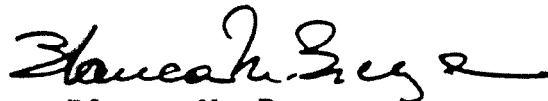
You have requested our advice regarding a request for a speech regarding healthcare reform from a group of companies which manufacture pharmaceuticals, diagnostic equipment, and various medical supplies. This does not appear to be the type of service which is customarily provided in connection with the practice of medicine. Accordingly, any payments received for making this type of speech would constitute a prohibited honorarium unless you determine that the speech is a service customarily provided in connection with the practice of your profession as a physician.

Also, please note that the "honorarium" provisions do not apply if you do not use the honorarium, and within 30 days either return the honorarium to the donor or donate the honorarium to the State's General Fund without taking a deduction for tax purposes. (Sections 89502(e) and 89503.)

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.<sup>2</sup>

Sincerely,

Scott Hallabrin  
Acting General Counsel



By: Blanca M. Breeze  
Counsel, Legal Division

SG:BMB:bb

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<sup>2</sup> Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.