



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

September 4, 2003

Nola Werren, Manager  
Research & Compliance Services  
State & Federal Communications  
80 South Summit Street, Suite 100  
Akron, Ohio 44308

**Re: Your Request for Advice  
Our File No. A-03-188**

Dear Ms. Werren:

This letter is in response to your request for advice on behalf of Robert McElderry regarding the lobbying provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. Is Mr. McElderry considered to have submitted a new registration when he terminated his employment as a lobbyist with one employer and then registered as lobbyist with a new employer within the same legislative session?
2. May Mr. McElderry continue lobbying despite his failure to take the required ethics course by June 2003?

### CONCLUSIONS

1. No. Any lobbyist who registers for one legislative session, and was previously registered for a prior legislative session, is *renewing* his or her registration, not submitting a new registration. Since Mr. McElderry was registered for the previous legislative session, he is considered to have renewed his registration. Changing employment as you have described does not change this conclusion.

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

2. No. Nothing in the Act or its implementing regulations gives the Commission authority to waive the ethics course requirement.

### FACTS

You are the authorized representative for Robert McElderry. For the 1999-2000 and the 2001-2002 sessions, Mr. McElderry was a registered lobbyist in the State of California on behalf of the California Medical Association, Inc. He completed the lobbyist ethics orientation course for each of these sessions as required.

For the 2003-2004 session, Mr. McElderry was registered for the California Medical Association for fifteen days, from January 1, 2003, to January 15, 2003 but did not complete a lobbyist ethics orientation course during this time. Between January and March of 2003, Mr. McElderry sought and obtained new employment as a regional director of state government affairs for Purdue Pharma LP. He terminated his lobbyist registration with the California Medical Association, Inc. and registered for Purdue Pharma LP. You prepared Mr. McElderry's Form 604 *Lobbyist Certification Statement*, indicating that Mr. McElderry had not completed the lobbyist ethics orientation course in the previous 12 months.

Mr. McElderry has now been informed by the Senate Ethics Committee that he was to have completed the required ethics course before June 30, 2003, because his registration on behalf of Purdue Pharma LP was a renewal, and not a new certification. Accordingly, the committee has suspended Mr. McElderry's conditional lobbyist certification and has prohibited him from lobbying on behalf of Purdue Pharma LP until he completes a lobbyist ethics orientation course. To date, there are no further courses scheduled for the remainder of the year.

### ANALYSIS

Under section 86100(a), "[i]ndividual lobbyists shall prepare lobbyist certifications pursuant to Section 86103 for filing with the Secretary of State as part of the registration of the lobbying firm in which the lobbyist is a partner, owner, officer, or employee or as part of the registration of the lobbyist employer by which the lobbyist is employed." The requirements for lobbyist certification include completion of an ethics course. (Section 86103(d)(1).) In this regard the Act states:

"In the case of a lobbyist who filed a completed lobbyist certification in connection with the last regular session of the Legislature, a statement that the lobbyist has completed, within the previous 12 months or will complete no later than June 30 of the following year, the course described in subdivision (b) of Section 8956. If the lobbyist certification states that the lobbyist will complete the course no later than June 30 of the following year, the

certification shall be accepted on a conditional basis. Thereafter, if the lobbyist completes the course no later than June 30 of the following year, the lobbyist shall file a new lobbyist certification with the Secretary of State which shall replace the conditional lobbyist certification previously filed. If the lobbyist certification states that the lobbyist will complete the course no later than June 30 of the following year and the lobbyist fails to do so, the conditional lobbyist certification shall be void and the individual shall not act as a lobbyist pursuant to this title until he or she has completed the course and filed with the Secretary of State a lobbyist certification stating that he or she has completed the course and the date of completion. It shall be a violation of this section for any individual to act as a lobbyist pursuant to this title once his or her conditional certification is void.” (Section 86103(d)(1).)

A new lobbyist may attend the lobbyist ethics orientation course any time during the 12 months following his or her initial registration if the lobbyist did not have the foresight to attend a course during the 12 months prior to registering. (Section 86103(d)(2).)

However, any lobbyist who registers for one legislative session, and was previously registered for a prior legislative session, is *renewing* his or her registration even if the lobbyist had terminated his registration. Specifically, we have advised that, in order to ensure that continuing lobbyists attend the ethics orientation course at regular intervals, a lobbyist’s registration would be deemed a renewal of registration if the lobbyist was registered for the 1997-98 legislative session, terminated his or her registration during 1998, then filed new registration documents for the 1999-2000 session. (*Smith* Advice Letter, No. M-99-155.)

Since Mr. McElderry was registered for the 2001-2002 legislative session and continued to act as a lobbyist in the 2003-2004 session, he was required to complete the course by June 30, 2003. This conclusion would not change even if he had formally terminated his registration, regardless of the session in which his registration was terminated.

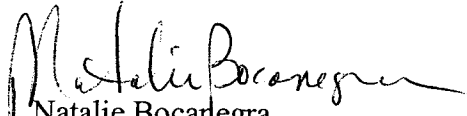
Pursuant to section 86103(d)(1), Mr. McElderry shall not act as a lobbyist until he has completed the course and filed with the Secretary of State, a lobbyist certification stating that he has completed the course and the date of completion.

Aside from the provision for “conditional lobbyist certification” as set forth above, there is no authority under the Act or the regulations to grant a waiver of the requirement that a lobbyist complete ethics training. (*McCormick* Advice Letter, No. A-02-013; *Chafe* Advice Letter, No. A-01-153.) Thus, no such waiver can be granted.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By:   
Natalie Bocanegra  
Counsel, Legal Division

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