



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

March 29, 2004

John R. Valencia
Wilke, Fleury, Hoffelt,
Gould & Birney, LLP
400 Capitol Mall, 22nd Floor
Sacramento, CA 95814

**Re: Your Request for Advice
Our File No. A-04-034**

Dear Mr. Valencia:

This letter is in response to your request on behalf of AstraZeneca L.P. for advice regarding the provisions of the Political Reform Act (the "Act").¹ The Fair Political Practices Commission ("Commission") does not act as a finder of fact when providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71; Government Code section 83114.) In addition, the Commission does not provide advice relating to past conduct. (Regulation 18329(b)(8)(A).)

QUESTION

May your client, AstraZeneca L.P., provide an honorarium to a member of the Drug Use Review Board, within the California Department of Health Services Medicaid program?

CONCLUSION

AstraZeneca L.P. may provide an honorarium to a member of the Drug Use Review Board, within the California Department of Health Services Medicaid program.

FACTS

The California Department of Health Services ("DHS") operates the state's Medicaid program (Medi-Cal). Within the state's Medi-Cal program, there is a Drug Use Review ("DUR") program. California's Medi-Cal DUR program describes itself as:

"...a dynamic program designed to optimize recipients' medical and pharmaceutical care, and to reduce the costs of a number of our health

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

care clients who are active participants in the regular activities of this care. It is the clinical portion of Medi-Cal interested only in the proper use of drugs in the practice of medicine and pharmacy. DUR reviews outpatient prescribing patterns, alerts pharmacists to potential prescribing hazards and educates all providers, enabling them to render the best possible care to recipients.”

The DUR program enlists the assistance and services of a total of eight California physicians and pharmacists (four each), selected by the director of the Department of Health Services.

The DUR Board meets on a regularly scheduled basis, and its meetings are publicly noticed through published agendas, website postings, and by notices published in the California Regulatory Notice Register, published by the Office of Administrative Law. A number of your clients, both filers and nonfilers under the Political Reform Act, regularly appear before, participate in, and actively engage in the activities and deliberations of the DUR Board and the DUR program. At least one member of the DUR Board has indicated a desire and willingness to accept honoraria unrelated to a bona fide business. And, as part of the routine interactions between your clients and members of the board, the question of payment for meals and beverages regularly arises, implicating the gift limitations under the Act.

On March 3, 2004, you clarified that your honoraria question pertains directly to your client, AstraZeneca L.P., which wishes to provide an honorarium to a member of the Drug Use Review Board. On March 16, 2004, you agreed to this office obtaining additional information from the DHS. According to DHS, the DUR Board is created under the Social Security Act (See, 42 USC § 1396r-8). Travel for the members is paid from federal monies and state matching funds. It has been determined the DUR Board is wholly advisory,² with DHS submitting proposals to the DUR Board for advice and comment. The advice and comment are reviewed by DHS and DHS makes the final decision.

ANALYSIS

Section 89502(c) provides:

“No member of a state board or commission and no designated employee of a state or local government agency shall accept an honorarium from any source *if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.*” [Emphasis added.]

Under this section, members of boards and commissions are prohibited from accepting honoraria. By the same token, section 89521 prohibits a person from giving an

² Please note that this advice letter does not constitute advice to DHS regarding whether or not DUR Board should be included in the code. As noted above, the Commission does not act as the finder of fact in providing advice. (*Oglesby, supra.*)

illegal honorarium to a state board or commission member, and imposes civil liability for the illegal payment of an honorarium.

However, the prohibition in section 89502(c) applies only to sources that the board member would be required to report on his or her statement of economic interests. You stated that members of the DUR Board are not expressly included in the Department of Health Services conflict of interest code and are not required to report any of their economic interests. Since DHS has determined that the DUR Board is solely advisory, the members are not required to disclose any sources of income. Thus, your client is not prohibited from paying an honorarium to the members.

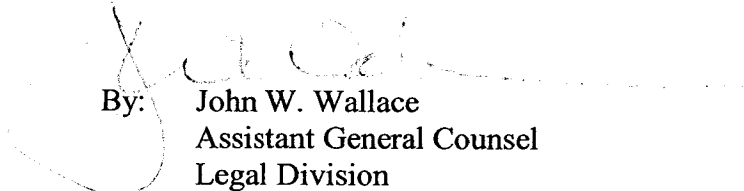
You also ask about free food and beverages provided to the members (we assume you mean at an event at which they speak). While we do not have facts to analyze this gift limit question, we do enclose regulation 18942 which provides some exceptions to the gift limit for beverages provided to an official at certain events at which the official speaks. We also enclose the following fact sheets:

- Local Elected Officers, Candidates for Local Elective Offices, Judicial Candidates, Officials and Employees of Local Government Agencies
- Travel Guide for California Officials and Candidates

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

Sincerely,

Luisa Menchaca
General Counsel


By: John W. Wallace
Assistant General Counsel
Legal Division

Enclosures
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