



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329  
(916) 322-5660 • Fax (916) 322-0886

March 17, 2009

Bruce W. Ebert  
300 Harding Blvd, Ste 118  
Roseville, CA 95648

Re: Your Request for Advice  
**Our file No. A-09-053**

Dear Mr. Ebert:

This letter responds to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that our advice is based solely on the Act. We therefore offer no opinion on the application, if any, of other post-government employment laws.

This letter is based on the facts presented. The Fair Political Practices Commission ("the Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

### QUESTION

Do the Act's post-governmental employment provisions preclude you from representing a doctor's reapplication to the licensing Board of Psychology when you were the Board member who signed his license revocation 14 years ago?

### CONCLUSION

The Act's permanent ban against "switching sides" prohibits you from representing the doctor in his reapplication proceeding before your former Board.

---

<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Our File No. A-09-053

Page 2

## FACTS

From 1990 through 1998, you were on the Board of Psychology (the "Board"), a state agency,<sup>2</sup> serving five terms as the Board's president. The Board is tasked with reviewing and possibly revoking licenses. The Board sets up an initial investigation, examination by an expert, review by members of the Attorney General's office, a trial on the evidence before an administrative law judge, and a decision. These processes do not involve the Board members.

In 1995, a licensing issue came before the Board in the process described above regarding one Dr. Lindseth. As a Board member, you signed the revocation order. There was no appellate review of this decision. You did not participate in any other aspect of the decision, including advising Board staff or interacting with the deputy attorney general. You left the Board in 1998.

Three years ago, Dr. Lindseth called you to engage your legal services as he intended to reapply to the Board to get his license back. This process would be a separate application to the Board. In addition to the application, there will also be a hearing before the Board, consisting of five psychologists and four members of the public.

You began to assist Dr. Lindseth in his re-application process and in so doing, discovered you had signed his revocation order when the Board revoked his license in 1995. You informed him and the Board that there might be a conflict. The Board did not object until a deputy attorney general was assigned to the matter and at that time, informed you there was a conflict.

## ANALYSIS

The Act contains two post-governmental restrictions:

*Permanent Ban:* This ban prohibits a former state administrative official from advising or representing any person, other than the State of California, for compensation in any judicial, quasi-judicial or other proceeding in which the official participated while in state service. (See Sections 87401-87402, Regulation 18741.1); and

*One Year Ban:* This rule prohibits a former public official of a state administrative agency from appearing for compensation before his or her former agency, or officer or employee thereof, for the purpose of influencing any administrative, legislative or other specified action. (See Section 87406, Regulations 18746.1 and 18746.2.)

Because you left the Board in 1998, the permanent ban is the only post-governmental employment restriction that may apply to you at this time, and is discussed below.

### **The Permanent Ban on "Switching Sides"**

The permanent ban on "switching sides" is a permanent prohibition on influencing any judicial, quasi-judicial, or other proceeding in which the administrative official participated while in state service. (Sections 87401 and 87402; Regulation 18741.1.) In other words, a

---

<sup>2</sup> The Act includes boards, for purposes of these sections, in the definition of State Administrative Agencies. (See Section 87400(a).)

Our File No. A-09-053

Page 3

public official may never "switch sides" in a proceeding after leaving state service. Sections 87401 and 87402 provide:

"No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

"(a) The State of California is a party or has a direct and substantial interest.

"(b) The proceeding is one in which the former state administrative official participated." (Section 87401.)

"No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401." (Section 87402.)

The prohibitions in Sections 87401 and 87402 only apply to judicial, quasi-judicial, or other proceedings. Section 87400(c) defines "judicial, quasi-judicial, or other proceeding" as:

"[a]ny proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency, including but not limited to, any proceeding governed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code."

In 1995, in the course of your duties as a member of the Board of Psychology, you were involved in the process of revoking individuals' licenses. In particular, you signed the order to revoke Dr. Lindseth's license, a doctor who has now engaged your services as an attorney.

The first issue we consider for purposes of the permanent ban is whether a former official "participated" in a "proceeding" while in his or her public position. An official is considered to have "participated" in a proceeding if the official took part "personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee . . ." (Section 87400(d).) By signing the revocation order that revoked Dr. Lindseth's license, you took part in the process of the revocation by approving staff's recommendation. You therefore "participated" in this process concerning Dr. Lindseth and the revocation of his license is clearly a "proceeding" under these provisions.

Our File No. A-09-053

Page 4

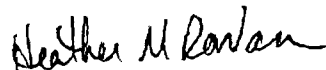
The second issue we consider is whether Dr. Lindseth's current application for re-licensure is the same "proceeding" as the one in which his license was revoked in 1995. The Act's permanent ban aims to prevent a person from "switching sides" by using information he or she learned while in public service for private gain. While you have stated that your involvement in the revocation order was limited, it is logical to assume you obtained information on, or had access to, the reasons for the revocation and the basis for the Board's staff recommendation. While this occurred several years ago and you indicate you have little or no recollection of your involvement in the revocation, by its language, the permanent ban conclusively presumes an official retains knowledge of his or her work on the agency's proceeding by his or her personal and substantial involvement in the proceeding.

We think this is a necessary and desirable reading of the statute. Otherwise, one would have to speculate on the sufficiency of the former official's retained knowledge of the proceeding each time the permanent ban becomes an issue. With this presumption in mind, the question is then whether the information available to you as a Board member in the revocation proceeding would possibly assist you in representing Dr. Lindseth in the reapplication for his license. We think this would be the case. With the benefit of knowing the Board's and staff's reasoning in issuing the revocation, possibly including knowledge of weaknesses in the Board's case or staff reservations, you would be in a unique position to now address these issues in the reapplication proceeding. On this basis, we think the permanent ban prohibits you from representing Dr. Lindseth in his reapplication proceeding.<sup>3</sup>

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

Sincerely,

Scott Hallabrin  
General Counsel



By: Heather M. Rowan  
Commission Counsel  
Legal Division

HMR:jgl

---

<sup>3</sup> The Act does not prohibit you, however, from passing this case to another attorney in your office, so long as you do not consult with or advise that attorney on the matter.