



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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October 17, 2016

Dylan Roy  
Deputy County Counsel  
1195 Third Street, Suite 301  
Napa, CA 94559

Re: Your Request for Advice  
Our File No. A-16-157

Dear Mr. Roy:

This letter responds to your request for advice regarding conflict of interest restrictions that may apply to Dr. Karen Relucio. Please note that we only provide conflict of interest advice under the Political Reform Act (the "Act")<sup>1</sup> and Section 1090. There are other potential areas of law that could arise such as common law conflicts of interest and restrictions on incompatible activities which may be imposed by a public official's agency. We are also not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), meaning that any advice we provide assumes the facts the requester provides to us are accurate. If this is not the case, then our advice could be different.

We have forwarded your request to the Attorney General's Office and the Napa County District Attorney's Office and we did not receive a written response from either entity. (See Section 1097.1(c)(4).) Finally, we are required to advise you that the following advice is not admissible in a criminal proceeding against any individual other than the requestor. (See Section 1097.1(c)(5).)

### QUESTIONS

1. Under the conflict of interest provisions of Section 1090 and the Act, may Dr. Relucio, who serves as the Napa County Public Health Officer (the "Public Health Officer") and Deputy Director of the County's Health and Human Services Agency ("HHS"):
  - (a) Accept employment with OLE Health ("OLE"), a nonprofit local healthcare clinic; or
  - (b) Contract with Napa Valley Medical Group ("NVMG"), a medical group practice, to provide services for Queen of the Valley Medical Center ("QVMC"), a nonprofit medical facility?

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<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.

2. Assuming Dr. Relucio begins working for OLE, does Section 1090 prohibit HHSa from entering into contracts with OLE? May Dr. Relucio take part in decisions involving such contracts under the Act?
3. Assuming Dr. Relucio begins working for NVMG and QVMC, does Section 1090 prohibit HHSa from entering into contracts with QVMC? May Dr. Relucio take part in decisions involving such contracts under the Act?
4. May Dr. Relucio take part in decisions involving OLE or QVMC if she does not receive any compensation for her services?

### CONCLUSIONS

1. Yes. Holding a private sector position, either as an employee or independent contractor, does not of itself create a conflict of interest.

2. Yes. Because of Dr. Relucio's high-level supervisory, management and oversight roles as a Deputy Director of HHSa and the Manager of the Public Health Division, it is unlikely that she can sufficiently separate herself from the contracting process and would therefore be participating in making the contracts.

3. Yes. As a provider of services for QVMC, Dr. Relucio could be influenced by a desire to maintain a favorable ongoing relationship with QVMC and the prospect of future business opportunities.

4. Yes. Under Section 1090 and the Act, a public official does not have a financial interest in a contract or a governmental decision where the official provides services without compensation.

### FACTS

You are requesting advice on behalf of Dr. Relucio in her capacities as the Public Health Officer and Deputy Director of HHSa.

#### 1. Public Health Officer

The Public Health Officer is a position mandated by Government Code Section 24000(s) and is appointed by the County Board of Supervisors. The Public Health Officer is charged with ensuring adequate efforts to control communicable diseases throughout the County. Dr. Relucio is a medical doctor and is board certified in Infectious Diseases and Internal Medicine. She is also certified as an HIV specialist. The Public Health Officer also serves in the following capacities:

- Deputy Director of HHSa. In this role, Dr. Relucio manages and supervises the activities and operations of the Public Health Division within HHSa and provides highly responsible and complex administrative support to the Director of HHSa.
- Manager of HHSa's Public Health Division. In this role, Dr. Relucio provides overall management and administration of the division, including development of the division's

objectives, design and implementation of supporting programs, processes, policies and procedures. She is also responsible for the development, administration, and control of the division's associated budgets. In addition, the division has a Local Emergency Medical Services Department and the Administrator of the department is a direct report to Dr. Relucio.

- Member, and an integral part, of HHSA's Senior Management Team.

## 2. OLE

### HHSA Contracts with OLE:

OLE has two general contracts with HHSA. One involves services to Indigent Children and the other is for Primary Care for Co-Occurring Behavioral Health Disorders. In addition, OLE will soon have a satellite clinic embedded at the HHSA campus. Neither contract is directly within the Public Health Division which Dr. Relucio oversees. Dr. Relucio has stated that she was not involved in the contracting process, including preliminary discussion, negotiation, reasoning, planning, drawing specification or plans or soliciting bids. She also states she will not be involved in any future decisions to amend or renew these contracts.

However, it is possible that in the future another contractor will be eligible to bid on the Indigent Children contract and if that occurs, the Public Health Division would take the lead in examining the services and deciding which contractor to use. (Currently, only OLE is capable of providing the services.)

### Dr. Relucio's Employment with OLE

OLE has offered Dr. Relucio a position where she would perform Quality Improvement Reviews on its HIV healthcare providers. Regular Quality Improvement Reviews are required in order to maintain OLE's Federally Qualified Health Care status. The position would offer Dr. Relucio the opportunity to keep her expertise up to date and allow her to utilize her specialty in a clinical setting.

## 3. QVMC

### HHSA Contracts with QVMC

QVMC has many contracts with Napa County involving HHSA. Four of these contracts are within the Public Health Division. Dr. Relucio reviews and approves these contracts.<sup>2</sup>

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<sup>2</sup> QVMC has additional ties to the Public Health Division. QVMC staff sits on various Napa County committees, including a committee of the Local Emergency Medical Services which is part of HHSA's Public Health Division. Also, a direct report to Dr. Relucio is the administrator of the Local Emergency Medical Services and sits on various other committees that include QVMC staff.

### Dr. Relucio as Independent Contractor of NVMG

Dr. Relucio would like to contract with NVMG to serve as a temporary physician filling in for another infectious diseases physician. She would see patients who are being treated on an inpatient basis at QVMC. Although she would be under contract with and paid by NVMG, she would perform services for QVMC for which QVMC would reimburse NVMG. Through this arrangement, Dr. Relucio would also apply for staff privileges at QVMC.

## ANALYSIS

### **Conflict of Interest under Section 1090**

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4<sup>th</sup> 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.) Typically, we employ a six-step analysis to determine whether an official has a disqualifying conflict of interest under Section 1090, as discussed below.

### **Conflict of Interest under the Act**

The Act’s conflict of interest provisions apply only when a public official “make[s], participate[s] in making, or in any way attempts to use his [or her] official position to influence a governmental decision in which he [or she] knows or has reason to know he [or she] has a financial interest.” (Section 87100; Regulation 18700(b)(2). The Commission has defined “making,” “participating in making,” and “influencing” a governmental decision in Regulation 18704, as discussed below.

### ***Question 1: May Dr. Relucio accept employment with OLE and contract to provide services for NVMG?***

Yes. Merely holding a private sector position, whether as an employee or independent contractor, does not in itself create a conflict of interest either under Section 1090 or the Act.

***Question 2: Does Section 1090 prohibit HHSA from entering into contracts with OLE? Under the Act, may Dr. Relucio take part in decisions involving such contracts?***

### **Section 1090**

*Step One: Is the official subject to the provisions of Section 1090?*

Section 1090 provides, in part, that “[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.”

Dr. Relucio is plainly covered by this prohibition in her capacities as the County Health Officer, Director of HHSA, Manager of HHSA’s Public Health Division and member of HHSA’s Senior Management Team.

*Step Two: Does the decision at issue involve a contract?*

Contracts between the County and OLE are at issue.

*Step Three: Is the official making or participating in making a contract?*

Section 1090 applies to officials who participate in any way in the making of the contract. Participation is defined broadly and includes any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall, supra* at p. 569.) For example, an official (or a public employee) may be convicted of a violation of Section 1090 if it is established that he or she had the opportunity to, and did, influence execution of the contract directly or indirectly to promote his or her personal interests. (*People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.)

Dr. Relucio states that none of the current contracts with OLE are directly within the Public Health Division and that she is not involved in the contracting process including preliminary discussions, planning or soliciting bids on either contract. To the extent that her role is the same in future contracts or amendments, Dr. Relucio will not be making or participating in making such contracts.

However, you state that there is a possibility in the future that the Public Health Division would play a role in future contracts for Indigent Children services. Currently, OLE is the only contractor capable of providing these services. If in the future another contractor becomes eligible, the Public Health Division would take the lead on evaluating services and deciding which contractor to use. As a Deputy Director of HHSA and the Manager of the Public Health Division, Dr. Relucio manages and supervises the activities and operations of the Public Health Division including development of the Division’s objectives, design and implementation of programs, processes, policies and procedures. She is also responsible for the development, administration, and control of the Division’s associated budgets. It is difficult to imagine how, while serving in these roles, Dr. Relucio would be able to completely separate herself from her division’s evaluation and

recommendation of a contractor. Thus if the department were to play a role in the contracts in the future, Dr. Relucio would be making or participating in making such contracts.<sup>3</sup> Therefore we continue this analysis with respect to contracts in which Dr. Relucio will participate.

*Step Four: Does the official have a financial interest in the contract?*

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest” (*People v. Honig, supra*, at p. 333), and officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Ibid.*) Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. The defining characteristic of a prohibited financial interest is whether it has the potential to divide an official’s loyalties and compromise the undivided representation of the public interests the official is charged with protecting.” (*Eden Township Healthcare District v. Sutter Health* (2011) 202 Cal.App.4th 208, 221.)

Although section 1090 nowhere specifically defines the term “financial interest,” case law and Attorney General Opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*Thomson v. Call, supra*, 38 Cal.3d at pp. 645, 651-652; see also *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; *People v. Darby* (1952) 114 Cal.App.2d 412, 431-432; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

As an employee of OLE, Dr. Relucio would have a financial interest in OLE contracts with HHSA. While a contract between HHSA and OLE may not have an immediate or direct effect on Dr. Relucio’s income from OLE, a contract decision would affect OLE’s finances and would contribute to its financial health. Therefore, Dr. Relucio’s employment with OLE and interest in continuing income from OLE would make Dr. Relucio financially interested in contracts between HHSA and OLE. Therefore, HHSA would be prohibited from entering into such contracts, unless an exception applied.

*Step Five: Does either a remote or noninterest exception apply?*

The Legislature has created various statutory exceptions to Section 1090’s prohibition where the financial interest involved is deemed to be a “remote interest,” as defined in Section 1091, or a “noninterest,” as defined in Section 1091.5. Nothing in the facts you have provided suggests that these exceptions apply.

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<sup>3</sup> As long as an employee plays no role whatsoever in the contracting process (either because such participation is outside the scope of the employee’s duties or because the employee disqualifies himself or herself from all such participation), the employee’s agency is not prohibited from contracting with the entity in which the employee is interested. See 80 Ops.Cal.Atty.Gen. 41 (1997) [firefighters permitted to sell a product, which they invented in their private capacity, to their fire department so long as they did not participate in the sale in their official capacity]; and 63 Ops.Cal.Atty.Gen. 868 (1980) [real estate tax appraiser could purchase property within the county at a tax-deeded land sale where he did not participate in or influence the appraisal].

*Step Six: Does the rule of necessity apply?*

In limited circumstances, a “rule of necessity” has been applied to allow the making of a contract that Section 1090 would otherwise prohibit where a public officer is the only one who may legally act. (65 Ops.Cal.Atty.Gen. 305, 310 (1982).) Nothing in the facts you have provided suggests that this exception applies in this instance.

Because we have found that Dr. Relucio would have a conflict of interest under Section 1090 prohibiting participation in contracts with OLE, we do not address in detail conflicts of interest under the Act. Please note that the Act would prohibit participation in any decision that would have a foreseeable and material financial effect and is not limited to contract decisions.

***Question 3: Does Section 1090 prohibit HHSa from entering into contracts with QVMC? Under the Act, may Dr. Relucio take part in decisions involving such contracts?***

***Section 1090***

***Steps One and Two:*** Is the official subject to the provisions of Section 1090 and does the decision at issue involve a contract?

As stated above, Dr. Relucio is covered by this prohibition. Contracts between the HHSa and QVMG are at issue here.

***Step Three:*** Is the officer making or participating in making a contract?

QVMC has many contracts with Napa County involving HHSa. Four of these contracts are within the Public Health Division. You state that Dr. Relucio often participates in these contracts, including contracts for specific programs which she manages. Moreover, she reviews and approves the contracts. Therefore, she participates in making the contracts.

***Step Four:*** Does the official have a financial interest in the contract?

This scenario differs from your question involving OLE. In this case, Dr. Relucio will not be employed by, but rather will serve as an independent contractor of the agency contractor. In determining whether Dr. Relucio has a financial interest in agency contracts with QVMC, we look to prior advice letters and court opinions in which a public officer was found to have a financial interest in contracts with the officer’s own business or that of his or her employer.

In the *Khuu* Advice Letter, No. I-14-107, we considered whether a city council was permitted to enter into a contract with city contractors who were clients of a firm that employed a city councilmember. In finding that Section 1090 prohibited the contract, we relied on an Attorney General Opinion in which the board of a redevelopment agency anticipated entering into contracts with business firms intending to locate or expand their offices in a certain redevelopment project area. (86 Ops.Cal.Atty.Gen. 187 (2003).) Several of those businesses were clients of one of the board member’s promotional products company. In determining that the board member would have a financial interest in any contracts between the redevelopment agency and those businesses, the Opinion stated:

“The board member would have a ‘financial interest’ in the contracts due to his business relationship with the contracting parties as a supplier of goods or services. (See 85 Ops.Cal.Atty.Gen. 176, 177-179 (2002); 85 Ops.Cal.Atty.Gen. 34, 35-37 (2002).) In this regard, the board member could be influenced by the prospect of future business opportunities directly related to the contracts or by a desire to maintain favorable ongoing relationships with the contracting parties. The Legislature has made clear that ongoing business relationships may represent financial interests for purposes of section 1090. (See, e.g., § 1091, subd. (b)(5), (b)(6), (b)(8).) The purpose of section 1090 “is to remove or limit the possibility of any personal influence, either directly or indirectly, which might bear upon an official’s decision . . .” (*Stigall v. City of Taft* (1962) 58 Cal.2d 656, 569; *Finnegan v. Schrader* (2001) 91 Cal.App.4th 572, 579-580; *Thorpe v. Long Beach Community College Dist.* (2000) 83 Cal.App.4th 655, 659; *Frazer-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 215.)”

In the advice letter, we said that the councilmember would be influenced by a desire to “maintain favorable ongoing relationships” with not only the firm that employed him but also the clients of the firm seeking to contract with the City. “Indeed, it is difficult to imagine how the councilmember would ever be able to provide his or her absolute, undivided allegiance to the City when participating in the contracting process involving clients of the firm.” (Citing 88 Ops.Cal.Atty.Gen. 106, 107 (2005) and *Frazer-Yamor Agency, supra*, 68 Cal.App.3d at pp. 214-215.

We believe that the analyses in the opinion and the advice letter are appropriate here. Just as in the opinion, Dr. Relucio has a business relationship with QVMC as a supplier of goods or services. The fact that she provides the services and receives payment indirectly through the arrangement between QVMC and NVMG is inconsequential. Similarly, her relationship with NVMG is analogous to that of the employee in the advice letter. Either way, Dr. Relucio would have a financial interest in QVMC because she could be influenced by a desire to maintain a favorable ongoing relationship with QVMC and the prospect of future business opportunities. Therefore, under Section 1090, assuming Dr. Relucio contracts with NVMG to serve as a temporary physician, HHSa would be prohibited from entering into contracts with QVMC.

Finally, neither the exceptions to Section 1090 nor the rule of necessity, explained above, apply to the facts in this matter.

***Question 4: May Dr. Relucio participate in decisions involving OLE or QVMG if she does not receive any compensation for her services?***

If Dr. Relucio provides services without receiving any compensation, she will not have a financial interest in these entities either under Section 1090 or the Act. Therefore, she would not be prohibited from participating in such decisions.<sup>4</sup>

**Other Laws**

Please note that in addition to the prohibitions of Section 1090 and the Act, there are other potential areas of law that could be affected, including restrictions on incompatible activities which may be imposed by the County, including HHSa or any other applicable government agencies. We do not advise regarding such other areas of law.

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

Sincerely,

Hyla P. Wagner  
General Counsel



By: Valentina Joyce  
Counsel, Legal Division

VJ:jgl

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<sup>4</sup> We note that in at least one matter, a contract for free (*pro bono*) services resulted in a public officer having a financial interest in a contract under Section 1090. (See 86 Ops.Cal.Atty.Gen. 138.) However, we believe the facts in this matter are readily distinguishable and do not result in a financial interest under Section 1090.