



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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COLUMBUS, OHIO 43215
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Advisory Opinion Number 82-006
September 2, 1982

Syllabus by the Commission:

1) Division (A) of Section 102.04 of the Revised Code prohibits a physician who is a member of the state Medical Board from receiving compensation, directly or indirectly, other than from the Medical Board., for services rendered as a consultant to the Department of Mental Retardation and Developmental Disabilities and as a provider for the Department of Public Welfare.

2) Division (D) of Section 102.04 of the Revised Code exempts a member of the state Medical Board from the prohibition in Division (A) of that Section, if both of the following apply:

a)The agency to which he is rendering the services, or before which the matter that involves the rendering of his services is pending, is an agency other than the one with which he serves; and

b)Prior to rendering the services, the public official files a statement with the agency with which he serves, the agency to which he is rendering the services or before which the matters are pending, and the Ohio Ethics Commission:

i)identifying the agencies involved;

ii)describing the matters involved and the services to be rendered; and

iii)including a statement of disqualification for two years from participation in matters concerning personnel of the agencies to which he is rendering the services, or before which the matters are pending.

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You requested an opinion concerning the application of the Ohio Ethics Law and related statutes to a member of the state Medical Board who provides services for or on behalf of other state agencies.

You stated, by way of history, that you are a member of the state Medical Board, and that in your capacity as a practicing physician, you receive compensation for services rendered as a consultant for the Department of Mental Retardation and Developmental Disabilities (hereinafter MRDD) and as a provider for the Department of Public Welfare (hereinafter DPW). You asked

whether Division (A) of Section 102.04 of the Revised Code prohibits you from receiving compensation for personal services rendered on any matter before DPW and MRDD. If the prohibition applies, you asked whether the exemption in Division (D) of Section 102.04 of the Revised Code requires that you disqualify yourself from the disciplinary, licensure, and enforcement activities of the Medical Board that concern the personnel of DPW or MRDD. Finally, you asked whether the Section 102.04(D) statements are required to be filed with each bureau, division, or office within a department to which the physician provides services.

Division (A) of Section 102.04 provides:

Except as provided in Division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter that is before the general assembly or any department., division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts. (Emphasis added)

As a person appointed to a state board, a member of the Medical Board is prohibited from receiving compensation, directly or indirectly, other than from the agency with which he serves, for services rendered personally in a matter before the General Assembly or any state department or agency. Thus, Division (A) of Section 102.04 of the Revised Code prohibits a member of the state Medical Board from receiving compensation from DPW or MRDD for services performed on matters before those agencies.

Division (D) of Section 102.04 of the Revised Code provides:

(D) A public official who is appointed to a non-elective office or a public employee shall be exempted from division (A), (B), or CC) of this section if both of the following apply:

(1) The agency to which the official or employee wants to sell the goods or services, or before which the matter that involves the rendering of his services is pending an agency other than the one with which he serves.

(2) Prior to rendering the personal services or selling or agreeing to sell the goods or services, he files a statement with the appropriate ethics commission, with the public agency with which he serves, and with the public agency before which the matter is pending or that is purchasing or has agreed to purchase goods or services.

The required statement shall contain the officials or employee's name and home address, the name and mailing address of the public agencies with which he serves and before which the matter is pending or that is purchasing or has agreed to purchase goods or services, and a brief description of the pending matter and of the personal services to be rendered or a brief description of the goods or services to be purchased. The statement shall also contain the public officials or employee's declaration that he disqualifies himself for a period or two years from any

participation as such public official or employee in any matter involving any public official or employee of the agency before which the present matter is pending or to which goods or services are to be sold. The two-year period shall run from the date of the most recently filed statement regarding the agency before which the matter was pending or to which the goods or services were to be sold. No person shall be required to file statements under this division with the same public agency regarding a particular matter more than once in a calendar year. (Emphasis added)

In the instant case, a member of the state Medical Board is a public official who is appointed to a non-elective office. Therefore, he may qualify for the exemption of Division (D) of Section 102.04 of the Revised Code if: (1) he is rendering the services to an agency other than the state Medical Board; and (2) he files a statement describing his interest with the state Medical Board, DPW, MRDD, and the Ohio Ethics Commission, making the arrangement a matter of public record and disqualifying himself for a period of two years from hearing cases as a member of the state Medical Board involving the personnel of DPW and MRDD. The statements need only be filed with the "public agency before which the matter is pending," that is, the department, and not each bureau, division, or office within the department. However, the statement should identify each bureau, division, or office before which matters are or may be pending, so that the department may distribute the form.

The conclusions of this opinion are based upon the facts presented, and are rendered only with regard to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: 1) Division (A) of Section 102.04 of the Revised Code prohibits a physician who is a member of the state Medical Board from receiving compensation, directly or indirectly, other than from the Medical Board, for services rendered as a consultant to the Department of Mental Retardation and Developmental Disabilities and as a provider for the Department of Public Welfare; 2) Division (D) of Section 102.04 of the Revised Code exempts a member of the state Medical Board from the prohibition in Division (A) of that Section if both of the following apply: (a) the agency to which he is rendering the services, or before which the matter that involves the rendering of his services is pending, is an agency other than the one with which he serves; and (b) prior to rendering the services the public official files a statement with the agency with which he serves, the agencies to which he is rendering services or before which the matters are pending, and the Ohio Ethics Commission: (i) identifying the agencies involved; (ii) describing the matters involved and the services to be rendered; and (iii) including a statement of disqualification for two years from participation in matters concerning personnel of the agencies to which he is rendering the services, or before which the matters are pending.


MEROM BRACHMAN, CHAIRMAN
Ohio Ethics Commission