



STATE OF ARKANSAS
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and Administration**

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June 2, 2016

Mr. C. Lowry Barnes
Professor and Chair
UAMS, Department of Orthopedic Surgery
4301 W. Markham, St. #531
Little Rock, AR 72205-7199

RE: Advisory Opinion No. 2016-09

Dear Mr. Barnes,

This letter is in response to your request for an advisory opinion, in accordance with Ark. Code Ann. § 19-11-715(b), concerning a possible conflict of interest between you and the University of Arkansas for Medical Sciences (UAMS) regarding the procurement of orthopedic implants and surgical instruments which you have developed. I appreciate your inquiry. Public service is a position of trust. Thus, it is paramount that public employees strive to avoid the mere appearance of a conflict of interest under Ark. Code Ann. § 19-11-705 or a violation of the public services code of ethics under Ark. Code Ann. § 21-8-304.

This opinion is based upon the following facts that have been presented to me. It should be noted that if one or more of these facts are later shown to be incorrect, that could result in a revised opinion.

1. You are currently employed by UAMS as a Professor and Chair of the Department of Orthopedic Surgery and the Musculoskeletal Service Line Director.
2. Your role as Musculoskeletal Service Line Director has influence on the selection of orthopedic implants and surgical instruments.
3. You work with the purchasing and contracting departments at UAMS to procure the products at the best possible price, in a fair and impartial manner.
4. You actively participate in research and development of new orthopedic implants and surgical instruments.
5. You provide paid consulting services to orthopedic companies and receive royalties for hip and knee products which you designed and developed.
6. Some products you designed and developed are used at UAMS, but you receive no royalty payments or other remuneration for such products used at UAMS.
7. The Interventional Services Committee at UAMS will review all purchasing and contracting decisions that you recommend that involve a company in which you have a financial interest to ensure that the product and vendor selection is in the best interest of UAMS and its patients.
8. The selection of vendors complies with state law and institutional policies to assure that no preferential treatment is given to any one vendor.
9. If you use a product for which you receive royalties or have a financial interest in the manufacturing company, you will disclose that interest to the patient as a part of the informed consent process.
10. The Institutional Conflict of Interest Committee at UAMS will monitor this practice on a quarterly basis.

of such contracts. "Employee" is defined broadly to include volunteer members of state boards and commissions, Ark. Code Ann § 19-11-701(8). "Direct or indirect participation" is defined under Ark. Code Ann. § 19-11-705(a)(2), and includes without limitation, "involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity." The position of employment and an employee's participation in the procurement process, both directly and indirectly, are examined on a case-by-case basis. State-supported institutions of higher education are subject to Ark. Code Ann. § 19-11-717, in addition to other statutes. Under Ark. Code Ann. § 19-11-717, a state-supported institution of higher education may contract or subcontract with a person or firm in which an employee has a financial interest if the contract involves patents, copyrights, or other proprietary information in which the employee has rights or interests, as long as the contract is reviewed by the Governing Board of the institution in a public meeting. Compliance with this provision ensures it is not a violation of § 19-11-709, a conflict of interest, or a breach of ethical standards.

Under the facts as stated above, I find no conflict of interest or breach of ethical standards, owing to your assertion that all contracts you have a financial interest in are reviewed by the Interventional Services Committee, that you provide disclosure to patients if you use a product designed and developed by you in which you have a financial interest, and the Institutional Conflict of Interest Committee monitors your disclosure on a quarterly basis. Additionally, to comply with the statute, all contracts or subcontracts in which you have a financial interest must be approved by the Governing Board of UAMS. Within 30 days of the contract or subcontract being approved by the Governing Board, a summary of the contract must be filed with the President of UAMS. Failure to provide such summary renders the contract null and void.

Please note, that under § 19-11-717(c), you are also required to file a form with the Secretary of State, no later than January 31 each year, disclosing the type and amount of the contract or benefits received under this section during the previous year.

This advisory opinion is issued in accordance with Ark. Code Ann § 19-11-715(b). Compliance with the above course of conduct is deemed to constitute compliance with Arkansas law and Executive Order 98-04.

Sincerely,



Larry W. Walther
Director

cc: Edward Armstrong, Administrator
DFA Office of State Procurement