

February 24, 1997

Russell B. West  
Union County District Attorney  
1007 4th. Street  
La Grande, Oregon 97850

Dear Mr. West:

This letter is in response to your correspondence dated February 5, 1997, concerning potential conflicts of interest of members of the Health and Human Services Committee of Union County.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
NO. 97-006**

STATED FACTS: The Health and Human Services Committee of Union County was established by the Union County Board of Commissioners for the purpose of advising the commissioners on public health and mental health issues. The committee will be making recommendations for criteria for the selection of a managed care organization to provide mental health services under contract to the county. The committee will make recommendations as to how local programs will deliver mental health services to Medicaid recipients. The committee will want to insure that quality mental health services are available to those in need of such services. There will be two bidders for the contract that will be based on the criteria: GOBI and HMO Oregon. HMO Oregon is a subsidiary of Blue Cross/Blue Shield of Oregon.

It appears that many psychiatrists could be impacted by the outcome of this process. A psychiatrist who is on the advisory committee is also on the board of directors of Northwest Mental Health Associates which contracts with Blue Cross/Blue Shield of Oregon to care for their commercial accounts. Northwest Mental Health Associates is an open panel for psychiatrists. Any psychiatrist in Oregon can be on this panel. There is one psychologist on the Mental Health and Human Services Advisory Committee of Union County who is the only local psychologist associated with Northwest Mental Health Associates. The psychiatrist on the advisory committee indicated that, if the contract were awarded to HMO Oregon, the psychiatrist could conceivably get additional clients. Some of the psychiatrist s clients pay with insurance products issued by HMO Oregon. However, the psychiatrist felt that, if Blue Cross/Blue Shield was awarded the contract, the psychiatrist s income would actually decrease.

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The committee is only taking testimony at this point. No recommendations have yet been made. Both the psychiatrist and the psychologist on the advisory committee have, up to this time, declared a potential conflict of interest and declined to participate in deliberations.

RELEVANT STATUTES: The following Oregon Revised Statutes are relevant to the issues addressed herein:

ORS 244.020(1): Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (8)(a) to (c) of this section.

ORS 244.020(7): Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

ORS 244.020(15): Public official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

ORS 244.040: Code of ethics; prohibited actions; honoraria. The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

(1)(a) No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated.

ORS 244.120: Methods of handling conflicts; generally; application to elected

officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

ORS 244.120(2): An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

QUESTION: Do mental health professionals who serve on the Health and Human Services Committee of Union County have a potential conflict of interest, an actual conflict of interest or no conflict of interest in relation to the committee's task of developing criteria for the selection of a managed care organization to provide mental health services under contract to the county?

OPINION: It appears that, in relation to the development of criteria, both the psychiatrist and the psychologist have at least a potential conflict of interest because they could end up as providers of mental health services under contract to the county which would have a financial impact to them. If either were to become involved in the actual selection process for the awarding of contracts, it appears that they would have an actual conflict of interest.

Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(7)]. A potential conflict of interest exists when a public official takes action that could possibly have a financial impact on the public official, a relative of the public official or a business with which the

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official or a relative of the public official is associated. Such possible financial impact is not certain. An actual conflict of interest occurs when the action is reasonably certain to result in a financial benefit or detriment. An actual conflict of interest would occur when an action taken by the public official would directly and specifically affect the financial interest of the public official or the public official's relative or a business with which the public official or the public official's relative is associated.

When a potential conflict of interest arises, the public official may participate in the action, once the public disclosure has been made. In the case of an actual conflict of interest, the public official must publicly declare the actual conflict and refrain from taking any official action on the issue. If the public official's vote is necessary for the public body to take action on the matter, the public official may vote but may not discuss, debate or otherwise participate in the matter.

ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, official position or office to obtain financial gain or avoidance of financial detriment for the public official, the public official's relative or a business with which the public official or the public official's relative is associated. This prohibition exists regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

**THIS RESPONSE IS BASED SOLELY ON THE INFORMATION PROVIDED IN YOUR WRITTEN INQUIRY AND IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.**

Do not hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn  
Executive Director