



Department of Transformation and Shared Services

Governor Asa Hutchinson
Secretary Amy Fecher

January 20, 2022

Dr. Portia Carr
7327 Worth Avenue E.
Benton, Arkansas 72019

RE: Advisory Opinion No. 2022-01

Dear Dr. Carr:

This letter is in response to a written request for a waiver pursuant to Ark. Code Ann. §19-11-715(b) and (c), which was sent to me electronically in a letter received on January 13, 2022, regarding the circumstances described below involving Infinity Therapy, LLC (Infinity Therapy) obtaining a contract from the Arkansas Department of Human Services (DHS) to provide speech therapy services, including evaluation and treatment of patients, at Arkansas State Hospital.

This opinion is based upon the following information that you have presented to me and upon which I am relying. It should be noted that if one or more of these information items are later shown to be incorrect, that could result in a revised opinion.

1. You are the owner and Chief Executive Officer (CEO) of Infinity Therapy since 2016;
2. Your responsibilities with Infinity Therapy include oversight related to case management, clinical utilization, policy and procedure compliance, contract management, and budgeting;
3. In your capacity as CEO, you do not personally provide speech therapy services;
4. Infinity Therapy is a contract company that utilizes sub-contractors to provide speech therapy services;
5. You are an employee of the University of Arkansas for Medical Sciences (UAMS) since August 2021;
6. At UAMS, you work as a 75% full-time equivalent assistant professor in the Communication Sciences and Disorders Audiology and Speech Pathology department;
7. Your duties at UAMS consist of teaching courses, advising students, and conducting research;
8. Your UAMS supervisor is aware of your ownership and role with Infinity Therapy;
9. Work allocation between UAMS and Infinity Therapy is completely separate; specifically, work performed for Infinity Therapy is not performed during time allocated for UAMS;
10. No UAMS resources are used to complete work for Infinity Therapy;
11. Infinity Therapy is anticipating an award from DHS Bid No. 71-22-0028 – ASH Therapy Services;
12. Infinity Therapy became aware of the bid through the DHS website;

Office of the Secretary

501 Woodlane, Suite 201 * Little Rock, AR 72201 * 501.319.6551

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13. The bid proposal response documents were submitted on December 7, 2021, and the anticipation to award was posted on the DHS website on December 17, 2021;
14. The anticipated contract is a one-year contract that may be renewed on a year-to-year basis for up to six years;
15. You have no procurement authority at UAMS or DHS; and
16. Your work at UAMS is not related to the procurement of the DHS contract.

I. Relevant Law

For purposes of interpreting Ark. Code Ann. §19-11-701 *et seq.*, Ark. Code Ann. §19-11-701 (8) defines "employee," as "an individual drawing a salary from a state agency, whether elected or not, and any non-salaried individual performing personal services for any state agency." "State agency" is defined in Ark. Code Ann. §19-11-701 (16) as meaning "any office, department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state."

Ark. Code Ann. §19-11-701 (2) defines "business" to mean "any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity." The term "financial interest" is defined in Ark. Code Ann. §19-11-701 (9) as meaning:

- (A) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than one thousand dollars (\$1,000) per year, or its equivalent;
- (B) Ownership of more than a five percent (5%) interest in any business; or
- (C) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management;

The ethical strictures set forth in Ark. Code Ann. §19-11-705 (a)(1)(A) prohibit state employees from participating directly or indirectly in any particular matter pertaining to any state agency contracts in which an employee or an employee's immediate family member has a financial interest. See Ark. Code Ann. §19-11-705. Ark. Code Ann. §19-11-705 (a)(2) defines "direct or indirect participation" as including, but not being limited to, "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."

II. Analysis

Based on the above representations, your employment at UAMS classifies you as a state employee, and your role as owner and CEO of Infinity Therapy establishes that you have a financial interest in the proposed state agency contract.

Your role as a 75% full-time equivalent assistant professor at UAMS and your role as owner and CEO of a company seeking to initiate a state contract for services from DHS, supported by your own representations that the two roles are separate and there is no cross-over in time or responsibilities, demonstrate that a conflict does not exist at this time so as to taint the procurement process.

III. Decision

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Thank you for seeking my counsel and approaching the issue with transparency. I am persuaded that under the representations as stated above, any ethical conflict that might exist is insubstantial or remote, and I grant permission to proceed to such extent and upon such terms and conditions as specified in this letter. This decision grants a waiver in accordance with Ark. Code Ann. § 19-11-715 (c). Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Ark. Code Ann. §19-11-701 *et seq.*

Sincerely,



Amy Fecher
Secretary

cc: Mitch Rouse, Office of State Procurement