



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Joseph Wood

April 24, 2023

Mr. Arthur Boutiette
Director
Disability Determination for
Social Security Administration
701 South Pulaski Street
Little Rock, Arkansas 72201

RE: Advisory Opinion No. 2023-06
Dr. Cathrine Whaley

Dear Mr. Boutiette:

This letter is in response to a written request for an advisory opinion and a waiver pursuant to Arkansas Code Annotated §19-11-715(b) and (c), which was sent to me in a letter dated March 15, 2023, and updated on March 20, 22, and April 10, 2023, regarding the employment of Dr. Cathrine Whaley by the Disability Determination for Social Security Administration (DDSSA).

This opinion is based upon the following information that you and your staff 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. DDSSA maintains an advertisement on its website seeking medical consultants;
2. The advertisement states: "Contract Medical Consultants. DDSSA is seeking Requests for Qualifications to provide contract services as a Medical Consultant. Valid medical license is required. Interested parties should write to: DDSSA, Attn: Jeff Stearns, 701 Pulaski Street, Little Rock, AR 72201";
3. Dr. Cathrine Whaley submitted a response with her qualifications to Jeff Stearns pursuant to the advertisement;
4. Mr. Stearns forwarded Dr. Cathrine Whaley's credentials to Dr. Beth Berry and Dr. Jay Rankin, who coordinated with Dr. Cathrine Whaley on her qualifications and application for employment;
5. Dr. Berry determined that Dr. Cathrine Whaley was suitable for DDSSA work and then conveyed her submitted materials to you for approval;
6. You reviewed and approved Dr. Cathrine Whaley's credentials and submitted materials for employment;
7. As a result of your approval, Mr. Stearns initiated the contract process through the Office of State Procurement to employ Dr. Cathrine Whaley;
8. During the contract process, Dr. Cathrine Whaley disclosed her relationship with Dr. Stephen Whaley on the Contract and Grant Disclosure and Certification Form;
9. Dr. Stephen Whaley is an employee of DDSSA;

10. Dr. Stephen Whaley is Dr. Cathrine Whaley's father;
11. In reviewing and assessing Dr. Cathrine Whaley's credentials and submitted materials, no one at DDSSA coordinated or consulted with Dr. Stephen Whaley concerning his daughter's application for employment;
12. Dr. Stephen Whaley oversees pediatric matters at DDSSA and, since Dr. Cathrine Whaley's proposed employment would address adult care, he was not consulted on his daughter's employment application; and
13. If employed, to ensure that there is no sense of conflict of interest, Dr. Cathrine Whaley will not report to anyone in the medical chain of command. Instead, she will report directly to you.

I. Relevant Law

Arkansas Code Annotated § 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 Arkansas Code Annotated § 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."

Arkansas Code Annotated § 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 Arkansas Code Annotated § 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* Arkansas Code Annotated § 19-11-705. Arkansas Code Annotated § 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, Dr. Stephen Whaley's current employment at DDSSA classifies him as a state employee, and the proposed DDSSA employment of his daughter, Dr. Cathrine Whaley, would constitute a state contract in which she would have a financial interest. The statutory prohibition proscribes Dr. Stephen Whaley's direct or indirect participation in DDSSA's contract process in the selection and employment of his daughter.

In this case, you have described Dr. Cathrine Whaley's application process as follows: 1) Dr. Cathrine Whaley's submission of credentials and materials to Mr. Stearns, 2) review by Dr. Berry and Dr. Rankin

Mr. Arthur Boutiette
Advisory Opinion No. 2023-06
April 18, 2023

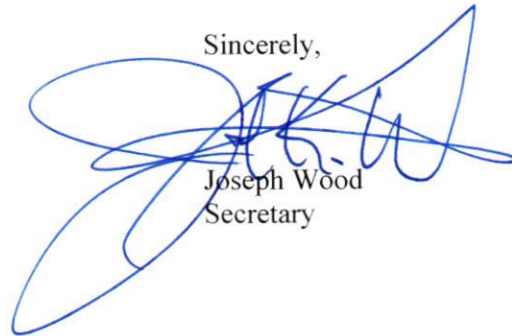
and coordination with Dr. Cathrine Whaley, 3) Dr. Berry's determination that Dr. Cathrine Whaley was suitable for employment, 4) Dr. Berry's transmission of the application materials to you, 5) your review and approval of Dr. Cathrine Whaley's employment application materials, and 6) Mr. Stearns' initiation of the contract process through OSP. DDSSA also clearly states that no one at DDSSA coordinated or consulted with Dr. Stephen Whaley concerning his daughter's application for employment. Furthermore, DDSSA also expressly represents that Dr. Stephen Whaley did not participate in the review and assessment of his daughter's proposed employment at DDSSA.

These express representations persuade me that there has been no impropriety in DDSSA's selection or decision-making process to employ Dr. Cathrine Whaley. As a result, I find that the circumstances demonstrate that a conflict is insubstantial or remote so as not to taint the current or future procurement processes.

III. Decision

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 based on DDSSA's express affirmations that 1) none of its personnel had any coordination with Dr. Stephen Whaley in the review, assessment, and selection of Dr. Cathrine Whaley for employment at DDSSA, and 2) Dr. Stephen Whaley did not participate directly or indirectly in the decision-making process to employ his daughter. Therefore, 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 the interests of the state and in accordance with Arkansas Code Annotated § 19-11-715(c); compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Arkansas Code Annotated § 19-11-701 *et seq.*

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Wood', is written over the typed name and title. The signature is stylized and somewhat illegible due to overlapping loops and lines.

Joseph Wood
Secretary