



# California Fair Political Practices Commission

October 11, 1985

Eric P. Gold, Member  
California Medical Assistance Commission  
1121 L Street, Suite 300  
Sacramento, CA 95814

Re: Your Request for Formal  
Written Advice  
Our File No. A-85-206

Dear Mr. Gold:

You have written seeking formal written advice to confirm the informal assistance which was recently provided to you over the telephone. Your letter states the facts and the questions presented by your request as follows.

#### FACTS AND QUESTIONS PRESENTED

I am a member of the California Medical Assistance Commission [CMAC]. I have been asked to serve as a Trustee to Alta Bates hospital. If I accepted the Alta Bates trustee position would this create any conflict with my duties as member of the California Medical Assistance Commission [CMAC]. Would I be obligated to disqualify myself from any [CMAC] vote, decision, or discussion other than that regarding a decision on Alta Bate's Medi-Cal Contract?

#### Alta Bates Hospital

Alta Bates is an acute care hospital located in Berkeley, California. It is a nonprofit corporation with tax exempt status. The hospital recently merged with Herrick Hospital (Berkeley) which is also a nonprofit hospital with tax exempt status. Each hospital has a separate board of trustees as well as sharing a common board of trustees (Acute Care Affiliates). Both hospitals as well as the Acute Care Affiliates board report to and are owned by Alta Bates Corporation, also a nonprofit corporation with tax exempt status.

While decisions affecting the hospitals are, at least in the first instance, made by the individual hospital and Acute Care Affiliates Board, final decisions regarding significant financial issues, are made by Alta Bates Corporation.

As a trustee, I would receive no compensation - either as salary, per diem, or otherwise. I would be a member of the hospital board and by virtue of that, of the Acute Care Affiliates board. I would not be a member of the Alta Bates Corporation board.

Alta Bates received a Medi-Cal contract from [CMAC's] predecessor (the Governor's Special Negotiator, Bill Guy). The hospital's contract has come before [CMAC] at various times for amendments. Both the contract and amendments to it involve substantial amounts of state funds.

For purposes of negotiation, CMAC's predecessor utilized what are known as HFPA's - health facility planning areas. It was assumed that hospitals within the same HFPA were in competition with each other - and would compete for state Medi-Cal contracts. Alta Bates and Herrick are the only two hospitals within their particular HFPA. Nevertheless, most persons would agree that they compete for patients and revenue with other nearby hospitals.

#### The California Medical Assistance Commission

The California Medical Assistance Commission (CMAC) is charged with the responsibility of contracting with hospitals for the provision of inpatient services to Medi-Cal beneficiaries, conducting several pilot projects to test the feasibility of providing care to Medi-Cal beneficiaries on a prepaid basis and contracting with counties interested in managing Medi-Cal on a local basis.

There are seven voting commissioners plus two ex-officio members of the [CMAC]. The seven voting members are appointed by the State Senate and Assembly (two each) and by the Governor (three). By statute (W & I section 14165.1) the members must come from persons with experience in specified areas, including the management of hospital services and the delivery of health services. I was appointed by the State Senate in 1983 and reappointed in 1985. My appointing authority considered me to meet the qualification of

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experience in the management of hospital services and the delivery of hospital services.

The [CMAC] is charged by statute with selecting an executive director who, along with his staff, negotiates contracts with hospitals (as well as contracts in the other areas of commission responsibility). Once a contract is negotiated, statutory authority gives [CMAC] 20 days to act on it. If approved, the contract is then signed by the Department of Health Services on behalf of the state. The Department implements the contract, monitors contract performance, and has the right to terminate the contract.

When [CMAC] came into existence, hospital contracts in most areas of the state had already been negotiated by its predecessor: the so called Medi-Cal czar (Bill Guy). The [CMAC] assumed his responsibility for the program, has added new contracts to the program and is responsible for negotiating amendments to existing contracts. This has been done on a hospital by hospital basis. There are presently about 270 contract hospitals, of which Alta Bates is one.

In respect to other areas of [CMAC's] authority, it is presently implementing a federal waiver to establish several prepaid health or capitation pilot projects. The two urban areas chosen by [CMAC] for these pilots are San Diego County and the San Fernando Valley section of Los Angeles County. In respect to county-management contracts, [CMAC] has been negotiating with San Mateo County. In addition, two other counties, San Bernardino and Orange, have expressed particular interest in undertaking such a project.

. . .

I have informed the hospital that I would serve as a trustee only on the condition that, under the terms of the Fair Political Practices Act and related statutes, I could do so consistent with my position as a CMAC member.

Even if disqualification is not required by law, it is my intent not to vote on any Alta Bates contract which might come before [CMAC]. In addition, it is my intent not to vote on a contract of a directly

competing hospital where such would have a substantial impact on Alta Bates.

Aside from what may be my voluntary intentions, I want to know what is required by law should I agree to serve as a trustee on the Alta Bates hospital board and the board of Acute care Affiliates. Therefore, I request your opinion letter regarding the following question:

If I was a trustee of Alta Bates Hospital (and Acute Care Affiliates), would the Fair Political Practices Act require that I:

1. disqualify myself from voting on an Alta Bates Medi-Cal contract (or amendment);
2. disqualify myself from voting on any other issue before CMAC;
3. not participate in any CMAC debate or discussion.

#### ANALYSIS

The Political Reform Act (the "Act")<sup>1/</sup> requires disqualification by any public official who knows or has reason to know that he or she has a financial interest in a governmental decision. Section 87100. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect upon certain enumerated interests, including the official; the official's immediate family; a business entity in which the official has an investment or holds any position of management; any real property in which the official holds an interest; or any source of income or gifts to the official during the preceding 12 months. Section 87103.

In the instant situation, you are considering becoming a trustee for a nonprofit, tax-exempt corporation. Because the Act defines a "business entity" as being operated for profit, you would not be a trustee of a business entity. Therefore, Section 87103(a) and (d) would not apply. You have also stated that you would receive no income; consequently, Section 87103(c) would not apply. Because the hospital is not an

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code.

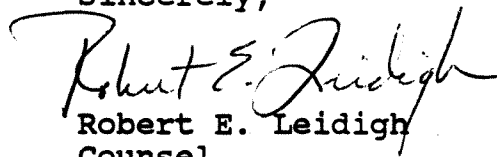
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interest in real property, Section 87103(b) would not apply. So long as you received no gifts from the hospital, Section 87103(e) also would not apply. Decisions affecting the hospital would not appear to have any financial effect on yourself or upon members of your immediate family. Therefore, none of the provisions of Section 87103 would apply in your situation and there would be no basis for disqualification under the current provisions of the Act, even though the hospital may be affected in a material, financial manner and even though, if you become a trustee, you would have a fiduciary relationship to the hospital.

You have recognized this anomaly and have stated that you would disqualify yourself voluntarily from any decisions which would have a material financial effect on the hospital, even if not legally required to do so by the Act. You are also aware of the provisions of Section 1090, et seq., and have taken steps independently to ascertain their applicability to your situation. This agency does not currently have jurisdiction with respect to Section 1090 and, therefore, does not provide advice with respect to its provisions. As a state agency official, you may consult with the Attorney General regarding Section 1090.

I trust that this letter adequately responds to your questions. Since you would have no financial interest created as a result of the trustee position with the hospital, the position would not result in any requirement of disqualification under the Act. Should you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh  
Counsel  
Legal Division

REL:plh

## CALIFORNIA MEDICAL ASSISTANCE COMMISSION

1121 L STREET, SUITE 300  
SACRAMENTO, CALIFORNIA 95814  
(916) 324-2726

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October 4, 1985

Ms. Barbara Milman  
General Counsel  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

Re: **Opinion Letter Request**

Dear Ms. Milman:

Yesterday I spoke with Robert Leidigh in respect to an informal opinion under the Fair Political Practices Act. He advised me that the following set of facts do not constitute a conflict of interest under the Fair Political Practices Act and indicated that I could formalize this advise by an opinion letter from your office. Accordingly, I am requesting your opinion letter regarding the following questions:

I am a member of the California Medical Assistance Commission. I have been asked to serve as a Trustee to Alta Bates Hospital. If I accepted the Alta Bates trustee position, would this create any conflict with my duties as a member of the California Medical Assistance Commission. Would I be obligated to disqualify myself from any Commission vote, decision, or discussion other than that regarding a decision on Alta Bates's Medi-Cal contract?

**Alta Bates Hospital**

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### OPINION LETTER REQUEST

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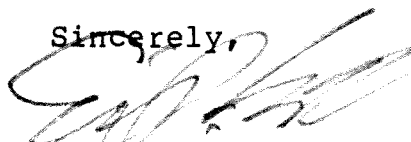
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2. disqualify myself from voting on any other issue before CMAC;
3. not participate in any CMAC debate or discussion.

If there is any further information you may need to fully respond to this opinion letter request, please do not hesitate to ask.

Thank you.

Sincerely,



ERIC P. GOLD