



Department of Transformation and Shared Services

Governor Asa Hutchinson

Secretary Amy Fecher

April 11, 2022

Ms. Deidre Cravens, MSPT
Rehab Plus, Inc.
Post Office Box 6175
North Little Rock, Arkansas 72124

RE: Advisory Opinion No. 2022-04

Dear Ms. Cravens:

This letter is in response to a written request for an advisory opinion and a waiver pursuant to Ark. Code Ann. §19-11-715(b) and (c), which was sent to me electronically in a letter received on April 7, 2022, and supplemented on April 11, 2022, regarding the circumstances described below involving Rehab Plus, Inc. (Rehab Plus) continuing to provide physical therapy services to students at the Arkansas School for the Deaf (ASD).

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 current owner and President of Rehab Plus since August 1, 2007;
2. Rehab Plus began providing physical therapy services to ASD in 1996, at which time the company was owned by your mother, Beth Cravens;
3. Rehab Plus has provided uninterrupted physical therapy services to ASD since 1996;
4. From 1996 to 1998, you provided physical therapy services to ASD;
5. Another licensed physical therapist employed by Rehab Plus currently provides services to ASD;
6. When your mother retired from Rehab Plus in 2007, you then assumed ownership of Rehab Plus;
7. Your responsibilities at Rehab Plus include contract management and policy and procedure compliance;
8. You began work at University of Arkansas for Medical Sciences (UAMS) on an as-needed basis in the acute care setting in March 2009, and have been a full-time staff physical therapist at UAMS since January 2013;
9. Your UAMS supervisor has been made aware of your ownership and role with Rehab Plus and ASD;
10. Your work allocation between UAMS and Rehab Plus is completely separate;
11. There is no work for Rehab Plus performed during work time at UAMS, and there are no UAMS resources used to perform work for Rehab Plus; and
12. You keep responsibilities and work completely separate to ensure that no cross-over in either resources or time occurs between Rehab Plus and UAMS.

Office of the Secretary

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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 President of Rehab Plus establishes that you have a financial interest in the proposed amendment to a state agency contract.

However, your representations that 1) the initial Rehab Plus contract began while your mother controlled Rehab Plus in 1996; 2) you discontinued physical therapy services at ASD in 1998; 3) you became owner and President of Rehab Plus in 2007 upon your mother's retirement; 4) you began working at UAMS in 2009, 5) the two roles at Rehab Plus and UAMS are maintained separately, 6) there is no cross-over in time or responsibilities, 7) there is no work for Rehab Plus performed during work time at UAMS, and 8) no UAMS resources are or have been used for Rehab Plus purposes demonstrate that a conflict does not exist at this time or is insubstantial or remote so as not to taint the procurement process.

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, 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

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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