

**[Advisory Opinion 1997-17]**

November 21, 1997

[Name1 withheld] and [Name2 withheld]  
Co-Chairs, Ethics Committee  
Montgomery County Department of Health and Human Services

Re: Acceptance of Unsolicited Gift from Patient or Client; Request for Opinion and Possible Waiver

Dear Co-Chairs [Name1 withheld] and [Name2 withheld]:

As the Co-Chairs of the Ethics Committee (the “Committee”) of the Montgomery County Department of Health and Human Services (the “Department”), you have asked the Montgomery County Ethics Commission (the “Commission”) for an advisory opinion, pursuant to §19A-7 of the Montgomery County Code, regarding the application of the Montgomery County Public Ethics Law (the “Ethics Law”) to the acceptance of unsolicited gifts by certain employees from certain donors. You have also suggested that, to the extent the acceptance of such gifts currently is prohibited, the Commission should consider the benefits of waiving, pursuant to §19A-8(a) of the Code, current restrictions so as to permit the acceptance of such gifts.

**I.**

**ADVISORY OPINION**

**Question Presented**

Does the Ethics Law prohibit a therapist (e.g., a nurse or a clinical social worker) employed by the Department of Health and Human Services from accepting an unsolicited gift from a patient or client?

**Advice**

The Ethics Law prohibits a therapist employed by the Department from accepting a gift from a patient or client.<sup>1</sup> It also requires a County employee who accepts a prohibited gift to report the acceptance of the gift to the Commission and either return the gift to the donor or transfer the gift to the County.

This advice is founded upon the following facts, law and analysis.

**A. Facts**

As stated more fully in the document that accompanied your request,<sup>2</sup> Department staff have presented the Committee with opposing views regarding the professional propriety and therapeutic value of a therapist accepting an unsolicited gift from a patient or client. One view is that in certain situations the rejection of an unsolicited gift from a patient or client may send a message that can be harmful. Another view is that the

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<sup>1</sup> The exceptions to this general prohibition are noted below.

<sup>2</sup> A copy of that document, entitled ETHICS COMMITTEE SUMMARY: GIFT GIVING, is appended to and incorporated into this advisory opinion.

acceptance of such gifts may “contaminate” the clinical process.

### **B. Law**

The Ethics Law, which is codified as Chapter 19A of the Montgomery County Code, was enacted “to guard against improper influence,” and, except for its criminal sanction provisions, is expressly intended to “be liberally construed to accomplish this purpose.” §19A-2(c)(d). The Law specifically addresses the acceptance of an unsolicited gift<sup>3</sup> by a public employee.<sup>4</sup> In pertinent part, §19A-16(c) provides:

A public employee must not knowingly accept a direct or indirect gift from any individual or organization that the public employee knows or reasonably should know:

\* \* \*

- (2) does business with the County agency with which the public employee is affiliated; [or]

\* \* \*

- (4) has an identifiable economic interest that is different from that of the general public, which the public employee may substantially affect in performing the public employee’s official duties.

§19A-16(d) contains numerous exceptions to §19A-16(c). One of those exceptions, the so-called “Ten Dollar Limit,” permits the acceptance of “items of personal property, other than cash, worth less than \$10.” *See*, §19A-16(d)(3).<sup>5</sup>

§19A-16(f) requires a public employee who receives a gift prohibited by §19A-16(c) to report the gift to the Commission and either return the gift to the donor or transfer the gift to the County.

### **C. Analysis.**

§19A-16(c) was enacted in accordance with a provision of the State Public Ethics Law which requires that each county enact conflict of interest provisions similar to those of the state law. *See*, Md. Code, State Gov. Art., §15-804; Mont. Co. Code, §19A-2(d).

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<sup>3</sup> “*Gift* means the transfer of anything of economic value, regardless of form, without an exchange of consideration of at least equal value.” §19A-4(h).

<sup>4</sup> “*Public employee* means, in pertinent part, “any person employed by a County agency . . . .” §19A-4(m).

<sup>5</sup> §19A-16(d) also permits the acceptance of the following gifts: meals and beverages under \$50 per event or a higher amount, not to exceed \$100, that the Commission sets; gifts to a public employee who must file a public financial disclosure statement under subsection 19A-17(a), if the gift is a courtesy extended to the office and consists of tickets or free admission for the employee and one guest to attend a charitable, cultural, civic, labor, trade, sports, or political event, including meals and beverages served at the event; any item that is solely informational or of an advertising nature, including a book, report, periodical, or pamphlet, if the resale value of the item is \$25 or less; a gift to the employee or a member of the employee’s immediate family if the value of the gift is less than \$150 and the gift is given for a wedding, graduation, birth of a child, or similar non-recurring personal milestone; gifts from a relative; and a specific gift or class of gifts which the Commission exempts from §19A-16 after finding in writing that accepting the gift or class of gifts is not detrimental to the impartial conduct of the business of a County agency. §19A-16(e) makes it clear that “[s]ubsection (c) does not apply to unsolicited gifts to a County agency.” These provisions are periodically revised by the County.

Consequently, the state and county public ethics laws are to be read together.

In 1982, the State Ethics Commission addressed the question of whether the State Ethics Law, which prohibits state agency personnel from accepting a gift from a person who does business with the agency with whom the donee is affiliated, prohibited a community home care aide in a local department of social services from accepting a bequest from the estate of a deceased, former client.<sup>6</sup> The State Ethics Commission concluded, among other things, that an agency client is a *person doing business with the agency*, and therefore a provision that prohibited a state employee from accepting a gift from one who does business with the employee's agency would prevent the acceptance of a gift from a donor who is a current client of the donee's agency. *Md. State Ethics Commission Opinion No. 82-54*, XVIII COMAR 533, 536 (December 15, 1982).

In light of the State Ethics Commission's construction of the state law and the express admonition in §19A-2(d) that the County Law be *liberally construed* to accomplish its purposes, the Commission is of the opinion that:

§19A-16(c)(2) prohibits professionals, including therapists, employed by a county agency from accepting a gift from a patient or client, unless the gift is permitted by §19A-16(d);<sup>7</sup> and

§19A-16(f) requires a therapist who receives a gift prohibited by §19A-16(c) to report it to the Commission and either return the gift to the donor or transfer it to the County.

## II

### WAIVER REQUEST

§19A-8 authorizes the Commission, after receiving a written request, to grant a public employee or class of public employees a waiver of any of the prohibitions of the Ethics Law, if the Commission makes certain findings. Your request suggests that the Commission may wish to consider the benefits of granting a waiver of the "Ten Dollar Limit" for the situations described in your letter, *i.e.*, when a therapist receives an unsolicited gift from a patient or client.

### Decision

The Commission will not grant a *blanket* waiver of the so-called "Ten Dollar Limit" for all unsolicited gifts from patients or clients to therapists under all circumstances and regardless of the value of the gift. However, if, in your view, permitting therapists to accept some gifts from patients or clients is both therapeutically prudent and consistent with the policies and objectives of the Ethics Law, you should articulate, support and submit a request for a more specific waiver.

We trust that this letter fully responds to your request for an advisory opinion and a waiver.

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<sup>6</sup> Unlike the employees of the Department, the employees of many local departments of social services are state employees. *See*, 67 Op. Att'y Gen. 356, 360-64 (1982).

<sup>7</sup> Although the question is moot in view of our conclusion regarding the applicability of §19A-16(c)(2), the Commission also is of the opinion that §19A-16(c)(4) applies to a therapist who has the ability to affect the economic interest of a client or patient in receiving or continuing to receive clinical services from the County, and thus §19A-16(c)(4) also prohibits such a therapist from accepting a gift from such a patient or client, except as permitted by §19A-16(d).

Very truly,  
[signed]

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Laurie Horvitz, Chair