



MONTGOMERY COUNTY ETHICS COMMISSION

Susan Beard
Chair

Bruce Romer
Vice Chair

October 18, 2021

Waiver 21-10-016

Pursuant to § 19A-12(b)(1)(B) of the Public Ethics Law, a public employee must not be employed by a business that negotiates or contracts with the County agency with which the public employee is affiliated, unless the Ethics Commission grants a waiver.

Carolyn Brown is a substitute School-based Community Health Nurse II (SCHN II) in the School Health Services Section (SHSS) of Public Health Services (PHS) Division at Montgomery County Department of Health and Human Services (DHHS). She would like to engage in outside employment as a Nurse Practitioner at The Catholic University of America (CUA), an entity which receives a grant from DHHS. Ms. Brown requests a waiver of the prohibition of § 19A-12(b)(1)(B) so that she can be employed by CUA in a role that is related to the grant issued by DHHS.

At DHHS, Ms. Brown works as a substitute School-based Community Health Nurse II (SCHN II). She is a registered nurse that helps in school health rooms either as a second SCHN to assist the permanent SCHN or to fill in when one is on leave. Although she has not done so, sub SCHNs have also been assisting with covid testing and vaccinations on an as-needed basis. Her primary availability at DHHS is during summer school and as a fill-in for vaccination clinics conducted at MCPS locations.

At CUA, Ms. Brown is a nurse practitioner working in a Montgomery County school-based wellness center (SBWC) to provide primary care to students in the school setting. She will split her time between Northwood High School in Silver Spring and Gaithersburg High School. Her proposed outside employment with CUA is directly funded by grants CUA receives from DHHS; she merely executes a nursing role for CUA and is otherwise not authorized to affect the contract. In her role at DHHS, Ms. Brown holds no contract monitoring or procurement responsibilities and is not involved in matters affecting the CUA grant from DHHS.

With respect to this particular request for a waiver, the agency designee for reviewing waivers indicated that:

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School health nurses and techs are normally covered under class waiver W017-07-011. In this case, the request does not fall under that waiver because the employee's position with the proposed outside employer is directly funded by the County. Much of the logic of the waiver applies in this case, though. It is my understanding that Ms. Brown has held a normal, merit nurse position with School Health in the past but dropped down to be a substitute nurse upon completion of her nurse practitioner education and licensure rather than resign from the Department altogether. As a substitute nurse, there are limits on the number of hours she can serve each year, and she is not actually guaranteed any hours at all. As a substitute nurse, she has no ability to influence procurements. In this particular case, her move to being a substitute nurse has enabled the Department to retain this employee at a time when the availability of nurses is especially critical. I concur that there is no actual conflict of interest in this case, and I aver that the public interest in retaining nurses in both of the roles she plays is particularly critical at this time.

Pursuant to § 19A-8(b)(3) of the Public Ethics Law, the Ethics Commission may grant a waiver of the prohibition of § 19A-12(b) if the Ethics Commission concludes that the proposed employment is not likely to create an actual conflict of interest. Upon a review of the request and the Department's concurrence in and support for the waiver request, the Commission finds that there is no actual conflict of interest. Pursuant to the standard of § 19A-8(b)(3), the Commission grants the waiver of the prohibition of § 19A-12(b).

The Commission notes that while 19A-12(b)'s prohibition is waived, the other provisions of the ethics law are not, including those prohibiting an employee from working on official matters relating to the outside employer. The approval of this waiver is conditioned on the facts on which the waiver is based remaining unchanged. This waiver expires when the outside employment approval with which it is associated expires, unless a continuation request for outside employment is timely filed and subsequently approved by the Ethics Commission.

In reaching this decision, the Commission has relied upon the facts as presented by Ms. Brown.

For the Commission:



Susan Beard, Chair