

UNITED STATES DEPARTMENT OF DEFENSE

DEFENSE HEALTH BOARD MEETING

OPEN SESSION

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ANDERSON COURT REPORTING
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1 P R O C E E D I N G S

2 DR. POLAND: Okay. We have another full
3 day here, so let's get started.

4 A reminder prior to you speaking, if you
5 would state your name. So your name and then
6 speak. Or thought of another way, before you
7 speak, say your name. So as long as you say your
8 name before you speak, we'll be okay. It really
9 does help the transcriptionist and saves us time
10 afterwards having to go through the transcripts
11 and figure out who said what.

12 One of the plans for today is to have a
13 working lunch to try to save us a little bit of
14 time, because there's a lot of flights that have
15 to leave a little early, otherwise people are
16 getting home at midnight, 2:00 a.m. So we're
17 going to try to accommodate that.

18 So as Miss Embrey stated yesterday,
19 Colonel Gibson will be the DFO (Designated Federal
20 Official) for this meeting. And we ask you to open the meeting.

21 COLONEL GIBSON: This is Colonel Gibson.
22 As the acting designated federal official for the

1 Defense Health Board, a federal advisory committee
2 to the Secretary of Defense which serves as a
3 continuing scientific advisory body to the
4 Assistant Secretary of Defense for Health Affairs
5 and the Surgeon Generals of the military
6 departments, I hereby call this meeting to order.

7 DR. POLAND: Thank you, Colonel Gibson.
8 I don't think we have any new folks here that
9 weren't here yesterday. So do we need to do
10 introductions?

11 COLONEL GIBSON: We have the list of
12 folks, so we're in good shape.

13 DR. POLAND: A reminder that this part
14 of the meeting remains an open meeting. I don't
15 think we have any other distinguished guests to
16 introduce.

17 So any administrative comments?

18 COLONEL GIBSON: This is Colonel Gibson
19 again. Because it's an open session, it is being
20 transcribed. Keep that in mind as you make your
21 statements. Speak clearly.

22 Restrooms, as you know, are outside.

1 For the Board members, a reminder to fill out your
2 travel settlements, the 1352s, and get them mailed
3 to Miss Ward so we can get you paid.

4 Refreshments. We'll have refreshments
5 this afternoon.

6 I know some of you have already been in
7 contact with Carolyn and Karen regarding taxis and
8 vans to the airport.

9 Next meeting is -- again is the 20th and
10 21st of March at Fort Detrick, Maryland. That's
11 the first Tuesday -- or the third Tuesday and
12 Wednesday of March.

13 AFMIC (Armed Forces Medical Intelligence
14 Center and USAMRIID (United States Army Medical
15 Research Institute of Infectious Diseases) are
16 hosting that meeting. This is our biowarfare,
17 counterterrorism meetings that will be a big piece
18 of the agenda. We do have several other agenda items
19 that will come forward.

20 And, finally, I want to thank Karen
21 Triplett and Carolyn Reyes here for their efforts

22 -- (Applause)

24 COLONEL GIBSON: -- Lisa Jarrett and

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1 Jean Ward back home for their valuable assistance
2 in putting this meeting together.

3 Thank you.

4 DR. KAPLAN: Kaplan. Roger, I have not
5 in the last year received confirmation of CME
6 credits. I know we don't get them for this one.

7 Can somebody look into that for us?

8 COLONEL GIBSON: Absolutely.

9 DR. POLAND: I'm going to resist
10 making...

11 DR. LUEPKER: Ed's a little short on
12 this.

13 DR. POLAND: Okay. Our first speaker
14 this morning is Mr. Paul Bley. He is associate
15 general counsel for Tricare Management Activity.

16 He will do our -- we do an annual ethics
17 briefing, and he'll do that for us today.

18 Because this is the first meeting of the
19 new board and then before we go into executive
20 session later today, I think it's important that
21 everybody be knowledgeable about the ethical
22 issues related to membership on a federal advisory

1 board. It's a serious issue.

2 Please take this time to ask questions,
3 because we've got the content expertise here.
4 More detailed individual situation questions I
5 imagine we could handle by telephone or e-mail at
6 a later time. But general questions related to
7 that.

8 So, Mr. Bley, please proceed.

9 MR. BLEY: As indicated, my name is Paul
10 Bley, and I'm the associate general counsel for
11 personnel and administrative law with DoD Tricare
12 Management Activity which is the field operating
13 table of the Office of Secretary of Defense.

14 I entitled this presentation Ethics for
15 the Special Government Employee because at least
16 some of you are special government employees.
17 Those who are not are proudly government employees
18 themselves who receive ethics training on an
19 annual basis either as a member of the Armed
20 Forces or as a, or as a civilian employee.

21 The bottom line for all special
22 government employees and all government employees

1 is that public service is a public trust.

2 Now, in a short presentation, I can't
3 school you on every ethics rule.

4 The big thing that we're doing here,
5 though, is you can associate a name with a face.
6 I'm the person you can go to, and this will show
7 you who to contact in case you have an ethics
8 question, and it should give you enough
9 information to identify the most important, the
10 most common situations you'll face as a special
11 government employee.

12 Questions you should be able to answer
13 after this presentation is where do the applicable
14 standards come from, how these ethical standards
15 are implemented, where can you find these
16 standards, what are the standards, where you
17 should direct any questions about those standards
18 and finally we're going to go through a summary at
19 the end.

20 These standards, first of all, come from
21 Title 18 of the United States Code. Those are the
22 criminal provisions in the United States Code.

1 These are actually crimes if you commit any of
2 these actions, crimes of, for example, in Chapter
3 11, bribery, graft and conflicts of interest.

4 Executive order 12,731 is what I placed
5 an excerpt of on the back table when I came in
6 this morning. Those are the bedrock principles of
7 ethical conduct.

8 Now, those principles themselves which
9 were put out by the first President Bush are very
10 general in nature and provide perhaps the best,
11 the best examples of the things you should avoid,
12 what you should be thinking of in taking any type
13 of action to avoid putting yourself in a position
14 where you're going to be accused of some type of
15 conflict of interest or some type of ethical
16 violation.

17 Finally, there are the federal
18 regulations. The five Code of Federal
19 Regulations, it's Title 5: Parts 2634 which have
20 to do with financial disclosures which you made on
21 an annual basis. The one this year was put back
22 for three months to put it as a calendar year

1 rather than a fiscal year; Part 2635 which are the
2 standards of conduct; Part 2637 and that's going
3 to, going to, we're going to have that, that's
4 going to be amended to give you a little more,
5 little more outline of that which has to do with
6 post-government service employment and, finally, 5
7 CFR 2640 which is an interpretation of some of the
8 criminal provisions.

9 In DoD and for those of you from other
10 agencies such as the VA, you wouldn't have access
11 to this.

12 We explain this in the Joint Ethics
13 regulation and DoD regulation which is found at
14 5500.7.

15 The standards are implemented in DoD
16 through the DoD General Counsel's Office.

17 The DoD General Counsel is the
18 designated agency ethics official which every
19 agency has and appoints deputies.

20 His principal team as far as, as policy
21 at the highest levels is the DoD Standards of
22 Conduct Office. Steve Epstein is the head of that

1 office. And then the DoD components of it also
2 have appointed ethics officials.

3 My supervisor of the General Counsel,
4 TMA has been delegated these responsibilities, and
5 he's delegated those to three other people in our
6 office including myself to help him.

7 How are the standards of conduct
8 implemented in DoD?

9 Well, the term agency designee is used,
10 and the agency designee is the first-level
11 supervisor at a GS-11 level or above.

12 In regard to this committee, that would
13 be Colonel Gibson as the agency designee for
14 Defense Health Board members.

15 The agency designee has some
16 responsibilities. For example, one responsibility
17 would be there's something called the widely
18 attended gathering.

19 Individuals can attend a widely attended
20 gathering without violating the ethical
21 principles. A widely attended gathering might be,
22 for example, some type of a party or event which

1 has a wide distribution of individuals and give
2 you the opportunity to interact with them. And
3 this would be something that might otherwise be
4 termed a gift.

5 One of the things that a first-liner, an
6 agency designee has to do is make the
7 determination that attendance would be in the best
8 interest of, in this case, the Defense Health
9 Board.

10 That would be one thing that would be
11 done. For special government employees, I'm not
12 sure how often that occurs, but that's a
13 possibility.

14 If you wanted to look at these
15 standards, where would you find them?

16 Well, one thing would be the US Office
17 of Government Ethics website which is
18 www.usoge.gov, and that explains these and lists
19 all these different sources in a format that you
20 can easily find on the Internet.

21 Now, for different types of activities,
22 for example, they discuss all these activities.

1 But for political activities, this would
2 be the Office of Special Counsel website. For
3 whistleblower activities, it would be Office of
4 Special Counsel website.

5 The essence of the ethics program are
6 the 14 bedrock principles. And, again, those are
7 the principles that are outlined in the excerpt
8 from the Executive Order that I placed on the back
9 table.

10 And I'm going to discuss three of those
11 here. And, again, public service is a public
12 trust. Self-explanatory.

13 When you accept this position, you are
14 acting in the public's interest, and you have to
15 take any -- all actions necessary to make sure
16 that you, you neither abuse the public trust or
17 you're perceived as doing so.

18 A second one -- and if any of you have
19 ever retired from the military service and asked
20 for ethics advice, this is a standard component of
21 any letter that's given.

22 You've acquired nonpublic information,

1 nonpublic government information during your
2 career, and you can't use that for private gain,
3 and that extends while you're in the military
4 service, while you're serving as a special
5 government employee and afterwards.

6 So to the extent that you, that you
7 receive nonpublic information in here, you can't
8 use it for private gain.

9 We know that we obviously can't tell you
10 simply to forget it. You simply can't use it for
11 private purposes or for that of a future employer.

12 And, finally, you shall not use your
13 public office for private gain.

14 And, again, there are -- this seems
15 pretty self-explanatory. You know, there
16 certainly, there certainly would be opportunities
17 for individuals to do that. And this is
18 something, again, in general terms -- you'll
19 actually see this also in the criminal -- in the,
20 in the regulatory proscriptions as well, in the
21 criminal proscriptions, you can't use your public
22 office for private gain.

1 If it's something that's public, if
2 it's, it's either nonpublic information, for
3 example, use it solely for our purposes.

4 Criminal provisions. Again, this is 18
5 U.S. Code.

6 203 and 205 we talk about representing
7 others to the government; 208, conflicting
8 interests, and, finally, 219, agent of a foreign
9 principal.

10 203 and 205 prohibit communicating on
11 behalf of another to the government with the
12 intent to influence.

13 Now, the intent to influence, at least
14 interpreted currently by the DoD Standards of
15 Conduct Office would cover most types of
16 communication, because the belief is that you
17 can't -- if you're employed by somebody else and
18 you're acting on, you're acting on their behalf,
19 you're acting with the intent to influence.

20 The saving grace of this provision is
21 that it only, it only involves something done in
22 connection with particular matters involving

1 specific parties and those that you participated
2 with for the government.

3 So a particular matter involving a
4 specific party is a, is a very specific -- is
5 defined very specifically.

6 If you have any questions as to whether
7 something you've done here is a particular matter
8 involving specific parties, that specific party --
9 this goes -- we go into this in detail with
10 post-employment letters, for example. But if you
11 have any question here whether specific parties'
12 interests are attached to something you're
13 considering, this is something you can come to us
14 through or go through Colonel Gibson to us on.

15 And 5 CFR 2635.702 also talks about
16 appearances, even if -- the appearance of a
17 conflict of interest even though you have no, even
18 though you do not have a conflict of interest in
19 fact, and it covers that as well. That's
20 something that we have to guard against as well.

21 208 prohibits acting as government
22 official in matters that will have an economic

1 impact on the official's financial interests or
2 affiliations.

3 And that's why on an annual basis you
4 submit an OG450, which is a statement of financial
5 affiliations. Now, there are waivers available for
6 18 USC 208. And waivers of employment I've seen
7 granted within DoD, but not to ownership of stock
8 in the same enterprise. Those could be granted,
9 but in my experience have not been granted.

10 Finally, 18 USC 219 which prohibits
11 service as a representative of a foreign principal
12 that requires registration under the Foreign
13 Agents Act or the Lobbying Disclosure Act.

14 Now, that's pretty easy for you to know
15 whether you're covered by it, because either
16 you're required to register or you're not.

17 I do mention here the emoluments clause,
18 because as a lawyer, it's nice to be able to talk
19 about Constitutional law we all learned in law
20 school but don't have a chance to practice it too
21 often.

22 What the emoluments clause involves is

1 the prohibition in the Constitution against
2 accepting -- holding an office of profit or trust
3 under the United States from accepting without the
4 consent of the Congress any present emolument,
5 office, or title of any kind from any king, prince
6 or a foreign power.

7 Well, it's unlikely that you're going to
8 be given an office by a king or a prince, but
9 certainly you have situations where we deal with
10 foreign countries in their sovereign capacity.

11 Now, there's an exception to this in
12 that if you're actually representing a foreign
13 government, you're represent -- if you're actually
14 representing a foreign government, and this is
15 basically a reading of the emoluments clause which
16 would indicate that isn't, that isn't a violation.

17 So the question is who you're
18 representing in a particular situation.

19 And, again, this is something you should
20 ask if you have any questions, you should ask
21 this.

22 We've received one query on this issue

1 already which we're going to be taking care of.

2 But, again, any questions on this, you
3 know, please ask them.

4 43 USC 423, the Procurement Integrity
5 Act, prohibits disclosing, obtaining certain
6 information regarding procurements.

7 Because of what the Defense Health Board
8 does, it's unlikely that you're going to face any
9 questions under this, under this Act itself
10 because of the fact that you simply aren't
11 involved in the procurement process.

12 At a place in the process where specific
13 interests or specific parties are involved,
14 normally this comes when you're working up
15 requirements for solicitation, for example, which
16 my understanding it's unlikely that you all ever
17 become involved in.

18 Finally, there are restrictions on
19 communicating after you leave the government under
20 18 USC 207.

21 And, again, very specific. And because
22 of what you do here, you're probably not going to

1 be involved in either. For example, there's an
2 absolute cooling off period for senior executives,
3 there's a cooling off period on going back and
4 communicating or representing concerning
5 situations where, for example, you've been
6 personally and substantially involved.

7 And, again, case-by-case basis. Because
8 of, because of the fact that you're acting as an
9 advisory board, it probably won't happen too
10 often.

11 But, again, if you have any questions
12 about when you leave, please let us know.

13 And, again, this involves particular
14 matters involving specific parties that you've
15 worked on personally and substantially. It's a
16 lifetime restriction, but it lasts for the life of
17 the particular matter.

18 For a contract, it's the life of a
19 contract including option years. And that's
20 probably the easiest way to identify it.

21 And, again, (a)(2) is a second provision
22 involving representing back. It's on particular

1 matters that you weren't personally and
2 substantially involved in but somebody under your
3 supervision was.

4 Because nobody here supervises anybody,
5 this shouldn't apply to your service as a matter
6 of fact.

7 Finally, there are regulatory standards.
8 These are the ones in 5, Title 5 of the Code of
9 Federal Regulations involving serving as an expert
10 witness, compensated outside speaking, writing and
11 teaching, but they are substantially narrowed
12 because they are involved with the duties that
13 you're involved with on this Board, because I know
14 that some of you are faculty members, and that
15 obviously doesn't prohibit you from engaging in
16 your normal employment.

17 Now, the prohibition on receiving gifts
18 applies fully to special government employees, but
19 many of the exceptions to that are useful in
20 making a determination that you can accept a gift.

21 And one that's particularly useful here
22 is accepting gifts based on outside business or

1 employment relationships.

2 For example, if your employer offers to
3 send you and your spouse on a retreat weekend,
4 retreat weekend off site, the part involving you
5 might be something, a retreat week and discuss
6 business, part of involving you might be something
7 related to your employment. For your spouse, that
8 would be something that perhaps would be a gift,
9 but because it's based on your outside employment,
10 it could be accepted.

11 The other common acceptance of gifts
12 provisions concern. For example, de minimis
13 gifts, gifts of under \$20 as long as you have not
14 received other gifts totaling at least a total of
15 \$50 from the same individual or company during the
16 course of a year can be accepted.

17 And one that's used quite often, for
18 example, is the provision involving modest items
19 of food and drink, not part of a meal, which would
20 allow you to, for example, accept coffee and
21 doughnuts in the back of this room if it was from
22 a private party and the like.

1 You're prohibited from using either for
2 the gain of a private interest, your own or anyone
3 else's the inside information you get here. And
4 that means you must know whether you're acting as
5 a Defense Health Board member or a private person,
6 you know, in any dealings that you do and in any
7 information you get.

8 If you have any doubts about this,
9 please, please ask us.

10 And those you're dealing with as far as
11 misuse of your position need to know the capacity
12 in which you're acting.

13 I received an inquiry earlier this
14 morning. Apparently there was a firm sending out
15 at least one, probably more letters wanting to
16 compensate members for talking about what they've
17 done here on the Board.

18 Now, that would be a good example of a
19 situation where you could not accept that type of
20 compensation because basically what they are
21 asking for is, one, inside information and, two,
22 it involves the use of your position.

1 And looking at the letter itself, it was
2 clear it involved use of the position. It
3 referenced, it referenced the fact that they knew
4 the person was a member of the Defense Health
5 Board.

6 If anybody receives such a letter and
7 wants to discuss it, please let me know.

8 Do we have any specific questions? You
9 may be involved in fund-raising or soliciting cash
10 for nonprofit organizations. And you can't
11 solicit from those whose interest may be affected
12 by the performance or nonperformance of your
13 duties as a member of the Defense Health Board.

14 You're also barred from soliciting
15 contributions for political causes while you're on
16 government duty or on government property.

17 DR. POLAND: This is Greg Poland. May I
18 ask a question about that?

19 So this day we're on government duty,
20 but three days from now we're not on government
21 duty. Is that a correct interpretation?

22 MR. BLEY: Yes. This doesn't -- as a

1 special government employee, you're on government
2 duty now and conceivably again, I'm not sure how
3 you're compensated, you won't be compensated three
4 days from now. You're going to be a private
5 citizen.

6 And if you want to ask your neighbor for
7 a political contribution, you certainly can do
8 that as long as you're not on government property.

9 Yes.

10 DR. OXMAN: Mike Oxman. If a company
11 like Merck are presenting before this Board and as
12 a faculty member at the University of California I
13 wanted to solicit a donation from Merck for
14 professorship, is that not permitted?

15 MR. BLEY: I would suggest in this case
16 -- and, again, I can take a look at that in
17 detail. Lawyers always like to have actual cases
18 and controversies between them, and I can take a
19 look at exactly what the setup is of your
20 employer.

21 I'd suggest offhand that if Merck
22 appeared before this Board asking for some type of

1 action or something that would affect them
2 financially -- and it doesn't have -- and I know
3 they do, they are a large corporation and they do
4 a lot of business -- that it would be best for you
5 not to be the individual that asks them for
6 contributions.

7 Again, I'm not sure whether your other
8 employer is actually -- it's another government
9 entity and it's not a nonprofit organization. I'd
10 like to take a look at that case law.

11 But I think that would be basically
12 characterized as use of your position here if they
13 were asking for something from us.

14 Yes.

15 COLONEL GIBSON: This is Colonel Gibson.
16 This is for the Board members.

17 This is one of the reasons why to the
18 extent we possibly can -- I know we've had some
19 exceptions where people have been presented purely
20 technical information -- we don't bring drug
21 companies or folks like that to this Board and
22 allow -- we just basically don't allow them to

1 present.

2 It has to be by a clear, clear
3 exception, and when that happens, I talk to them a
4 lot ahead of time to say, "Technical information
5 only. Don't even need to know about where your
6 company's located. We're talking about the
7 product is all."

8 And that helps you guys not get in a
9 situation where we could possibly get into a
10 situation or something where I've got to call Paul
11 and say, "Hey, let's figure this out."

12 MR. BLEY: And given my work with the
13 Tricare Management Activity, we have another FACA
14 (Federal Advisory Committee Act) which actually
15 deals with pharmaceuticals, and we're quite
16 familiar with the fact that it appears prevalent
17 in the pharmaceutical industry that they have
18 a lot of money available for different things.
19 They may have unrestricted grants, they may
20 have, they may have a lot of ways of getting
21 money to individuals. And, frankly, they are
22 comfortable in that arena, whether it's inviting
23 people to dinner, presentations or to a three-day

1 weekend meeting at the Mandarin Oriental on Miami
2 Beach. They are comfortable in that arena.

3 And there's some things, for example,
4 like, for example, like honorariums that seem to
5 be commonplace in that industry that it's very
6 hard to work into government employment.

7 So we're pretty familiar with some of
8 the things that go on, and we're very careful
9 about it.

10 DR. POLAND: And that raises a question.
11 This is Greg Poland.

12 As academics, and maybe there's some
13 business people or something, compared to other
14 federal advisory committees, we don't really go
15 around at the beginning and state potential
16 conflicts of interest.

17 Now, we're also not voting on individual
18 matters necessarily.

19 But as academics, many of us do have
20 honorarium, advisory committee, clinical research
21 protocol, studies, et cetera, that are funded by
22 industry.

1 How would we handle those or deal with
2 those?

3 MR. BLEY: Well, we're going to be
4 taking a look at those in the context.

5 And, again, some of these may be things
6 that your institution is doing that you're not
7 doing yourself.

8 We'll take a look at any of your private
9 financial affiliations when the OG450s are
10 evaluated on an annual basis.

11 And there also is I think kind of a
12 difference here.

13 For example, let's say that one of you
14 is an expert on treatments for alcoholism and
15 you're invited to talk about that from a
16 pharmaceutical company for this three-day weekend
17 in Miami Beach.

18 Okay. We don't do anything here with
19 anti-alcoholism, or perhaps we don't.

20 They are asking, they are really asking
21 for your expertise, not what you learned on the
22 Defense Health Board, they are asking for your

1 expertise.

2 That would be something for your, your
3 own employer, your own institution to make a
4 determination over whether that's sufficient.

5 If you, on the other hand, worked for
6 TMA, where I faced a question like that, that
7 would be our business.

8 As a special government employee, it's
9 limited, you know, a lot of these things end up
10 being limited on what you can actually do as far
11 as -- gifts are one thing; outside compensation is
12 another thing. We know that you're compensated on
13 the outside because you're special government
14 employees.

15 So we'll take a look at those on a
16 case-by-case basis.

17 Things such as stock in a company is
18 something we probably can't do anything with
19 because the Department of Defense doesn't grant
20 many waivers. But employment is something that we
21 generally can do things with.

22 DR. POLAND: So, again, Greg Poland, to

1 clarify, you know, for example, we have research
2 studies or participate in advisory committees, et
3 cetera. But that OG (Operation Guidelines)
4 document is generated yearly, I guess, and sort
5 of after the fact.

6 MR. BLEY: Well, it's generated yearly.

7 However, if you have something that
8 comes up later, again, you can now -- the reason
9 why we have a requirement for annual training is
10 to make sure that this doesn't -- it's not simply
11 filling in a form. We have annual training which
12 outlines some of the common situations, and you
13 can come back to me during the course of a year if
14 you have something come up. And I'm happy to and
15 I'll endeavor to give you a quick answer, because
16 I know that things are fast-moving oftentimes with
17 these types of business arrangements.

18 So if something new comes up -- and,
19 again, you'll learn over time if you ask these
20 questions what isn't a problem because it's been
21 approved in the past.

22 Questions, please come to me, get you a
23 quick answer.

1 And, again, I take it my predecessor was
2 -- I don't know how many questions you receive in
3 the course of a year, Colonel Gibson.

4 COLONEL GIBSON: Usually somewhere
5 between six and eight is typical, and most of them
6 were very straightforward.

7 MR. BLEY: So to the extent that they
8 come up and they have questions -- and, again, it
9 may be that it's something that you're not dealing
10 with personally that doesn't affect your
11 compensation.

12 The things I would ask about are the
13 questions where compensation is going directly to
14 the individual involved. Those are, those are the
15 most important ones to ask questions.

16 And, again, then we'd be asking
17 questions about what issues this committee faces,
18 this Board faces and basically whether there's,
19 whether there's a conflict, because the ultimate,
20 the ultimate way of curing a conflict is to, is to
21 basically recuse yourself from that particular
22 issue when it comes before us so you cannot speak

1 on it or, you cannot speak on it or affect the
2 opinion of this Board.

3 So there's a cure for that type of
4 thing. But you obviously want to minimize use of
5 that, because everybody here has been invited
6 because of their special expertise.

7 DR. SHAMOO: Adil Shamo. I think this
8 Board and the people in it have such a broad
9 interest, and to define it in such a manner which
10 is so broad to me -- I mean, I'm sympathizing with
11 Dr. Poland's questions -- it's going to paralyze
12 all of us practically if you define it.

13 The way I would define it, if our
14 activities during the work, whether it's work
15 during the meetings or in the communication, have
16 an impact on getting a contract or speaking
17 engagement or whatever, then it's a conflict of
18 interest.

19 But I as a professor, I get invited to
20 give workshops and teach and give seminars. I get
21 compensated, sometimes zero, sometimes a lot of
22 money.

1 And it has really no impact on our
2 function here at AFEB before this or the Defense
3 Health Board because there are no matters we vote
4 on actionwise or even influencing physical shake
5 hand with these people. There is no relationship.

6 So for us to -- for me to bring every
7 issue before you is really overreaching.

8 MR. BLEY: Right. And I don't expect
9 you to bring every issue.

10 And, again, part of this, and maybe I
11 haven't been clear here, part of what really
12 impacts the fact that most issues aren't brought
13 before us is that, is that what we want to look at
14 is whether you've considered here a particular
15 matter involving specific parties and then --
16 actually, that's (a)(1) here.

17 And, again, it's the life of the
18 particular matter. But a lot of things you do
19 here don't really involve particular parties,
20 okay?

21 The things when you get down to a
22 particular party in the government, the most

1 common one is the solicitation of a contract.

2 Here you're dealing I understand
3 generally with more general matters that involve
4 issues where particular parties' interests haven't
5 yet been attached. Maybe sometime they will be,
6 you know.

7 If you discuss, for example, pandemic
8 and different strategies for combatting it, you're
9 not getting into the question over whether we
10 should build up a stockpile of some particular
11 pharmaceutical that's manufactured by a particular
12 company.

13 DR. POLAND: Greg Poland. We would, we
14 would do that. But what we wouldn't do is, say --
15 it's one thing when there's only one drug
16 available. It's another thing -- let's take
17 vaccines for example. There are a number of us
18 engaged in vaccine research where we have
19 relationships with companies.

20 What to me the line that we would walk
21 is we would not say, "This is the company we think
22 you should buy vaccine from."

1 What we would do, however, is to look at
2 different scientific aspects of vaccine
3 development and say, "This approach or this
4 approach is one that bears careful watching," or
5 something like that.

6 But Colonel Gibson is always prompt in
7 pointing out to presenters, et cetera, that we
8 have no procurement function at all.

9 MR. BLEY: I think in general again when
10 you're that far up, that would generally not be
11 characterized as a particular matter because the
12 interest of the specific parties hasn't yet been
13 attached to it.

14 In the contract world, that's kind of
15 the difference between requirements planning which
16 is earlier in the process and the actual drafting
17 or consideration of the solicitation which is done
18 which is later in the process where we know who's
19 going to be bidding on it, where we're evaluating
20 their compliance with, with the particular
21 solicitation.

22 So the earlier in the process you are,

1 the more you're acting in the requirements role is
2 the less likely that this will be deemed to be a
3 particular matter.

4 We're not going to do anything which --
5 we're not going to -- we have no interest in
6 overinterpreting this and interpreting it too
7 conservatively to tie the hands of the individuals
8 involved, okay?

9 I think most of the situations where it
10 would look like you were involved in a particular
11 matter and you're using your office for private
12 gain or the gain of your other employer would be
13 pretty obvious to you, okay? And it would involve
14 very specific situations and not the more general
15 ones, okay?

16 And, for example, a good example would
17 be, would be that representative from drug company
18 Triple A comes up here to speak, and you solicit
19 that individual for a particular contribution to
20 some program. That would be a good example of
21 something where it would appear that perhaps -- it
22 would certainly create the appearance that your

1 views were tied to that future action which wasn't
2 done on behalf of the government.

3 Any other questions on that?

4 Yes, sir.

5 DR. POLAND: We'll go right down the
6 row.

7 DR. KAPLAN: Kaplan. I just wondered
8 how you differentiate. A few minutes ago you
9 answered Dr. Poland by indicating that we're
10 meeting here today but we're not meeting tomorrow,
11 so in terms of that.

12 The truth of the matter is that the
13 terms of appointment are a two-year term.

14 So that's a very gray line, seems to me.

15 COLONEL GIBSON: This is Colonel Gibson.
16 One of my jobs as the executive secretary is to
17 keep track of the days. There's actually a limit
18 on the actual days that you can serve as a special
19 government employee. I keep track of those. And
20 you're not compensated -- and there is a limit of
21 130 days per 365-day period that you can, in fact,
22 serve as a special government employee.

1 So I keep track of those. So tomorrow
2 you're not working as a special government
3 employee, and I --

4 DR. KAPLAN: Even though the appointment
5 is --

6 COLONEL GIBSON: Even though the
7 appointment is for a period of time, you have days
8 when you are, in fact, engaged in your duties as a
9 special government employee and those when you are
10 not. And I count even those times when we do
11 teleconferences.

12 DR. POLAND: Russ?

13 DR. LUEPKER: Yes, Russell Luepker. I
14 appreciate this because I have a fairly specific
15 question. I've been approached by a colleague
16 from another university who has an educational
17 program and he wishes the Armed Forces and this
18 group would be supportive of taking that up, and
19 he's asked me to help push for that.

20 I have done nothing, but I wonder how
21 that would stand vis-a-vis the rules.

22 MR. BLEY: Well, some of the questions

1 -- and, again, probably this is a pretty common
2 one. Some of the questions certainly would be
3 different if the individual -- and I'm not going
4 to ask you before this Board if the individual
5 offered you compensation for doing so. That would
6 certainly be a different type of situation.

7 And I think the other questions -- and,
8 again, Colonel Gibson can probably provide you
9 with some additional information. You know, no
10 compensation being given, you're doing things
11 here, for example, you've been very clear about
12 why you're doing things and you're not
13 misrepresent -- you're basically representing why
14 you're doing it and your friendship with the
15 individual.

16 And in a lot of cases it's considered
17 that basically that type of notice when no
18 compensation is involved, okay, and you're not
19 giving this individual inside information, you're
20 not telling them basically what's been discussed
21 in nonpublic session or the like and giving that
22 person an advantage over other individuals, they

1 are not offering anything specifically because
2 they don't do it before this Board, so...

3 Please?

4 DR. SHAMOO: This is Dr. Shamoo. I
5 think this is a clearcut conflict of interest even
6 if you're not compensated whatsoever. You are
7 here to serve the public good and not to serve
8 somebody's friends or an institution or whatever
9 as a member of the Board.

10 So even there is no monetary
11 compensation, you never know what future
12 compensation you did that favor to them, because
13 you are no longer in your capacity only serving
14 the public interest.

15 We are not here to represent an
16 associated University of Rochester, which is my
17 former employer, or University of Kentucky here.
18 We are here to represent the interests of the
19 public, period.

20 To me I would see that -- by the way, I
21 have worked extensively on conflict of interest,
22 okay -- and I will see that, black and white,

1 conflict of interest.

2 COLONEL GIBSON: Mr. Bley, for your
3 information, Dr. Shamoo is our medical ethicist on
4 the Board.

5 And I would like to talk to you about
6 that when -- in a little more depth.

7 DR. LUEPKER: I believe a number of
8 people in the room have been approached by the
9 same persons.

10 MR. BLEY: And we can certainly talk
11 about that off line.

12 Doesn't involve the criminal
13 prohibitions. There is the general prohibition on
14 appearances that we always have to take a look at,
15 and that's basically one thing that we want to
16 take a look at here.

17 Yes?

18 DR. PARKINSON: Mike Parkinson.

19 For example, I, too, got one of these,
20 and I think many of us did from this company.

21 There is a legitimate
22 information-seeking function that as a former

1 military member and even now as an existing AFEB
2 member, that people who want to do business with
3 the Department of Defense and with the Military
4 Health System have no clue about how the military
5 assesses market opportunities, how it then
6 acquires, how it then bids, how it whatever, and
7 they basically need information about, "If I have
8 a brand-new break-through product that does early
9 detection of tuberculosis, who would I talk to?
10 How would it work?"

11 And so when I got this letter, what I
12 essentially did, A, I notified Roger immediately
13 and, B, there's a number of former military
14 colleagues -- there is life after the military --
15 who work for companies who do exactly this.

16 So I asked Roger as a colleague, "Can
17 you give me the name of five or six people that
18 are formerly in the military that are now out
19 there who could be a resource for someone in this
20 company?" I'm not pushing that, but there's an
21 information function here as to how you do that.

22 In much the same vein in this regard,

1 there are universities and teaching centers inside
2 the military that use curriculum materials all the
3 time, you saw some of them yesterday, that are
4 developed in the private sector.

5 So I think providing people with
6 information as to resources and contacts and DoD
7 processes is absolutely a fair thing to do. It's
8 not me, but I immediately got out of the middle
9 and I said, "Yeah, there's probably six people
10 that are in this business. There are certainly
11 acquisition rules," could send them a website, all
12 those types of things.

13 And so that's how I saw it but with no
14 endorsement. That's really where I think it goes
15 is an information function, and then we have to
16 make sure there's robust people to catch the
17 question over at TRICARE or catch the question in
18 the research in --

19 MR. BLEY: You know, what DoD prefers,
20 what DoD prefers in situations, and we get into
21 this question with the question of advisory boards
22 for our own employees, what DoD prefers is a

1 situation where if you're going to explain
2 something to offerers, is to have some type of
3 public forum.

4 And we certainly have a public forum for
5 offerers where we get ideas and what they can do
6 to supply the needs.

7 I've attended several of these in our
8 offices in Aurora, Colorado, and they are held for
9 a variety of different reasons, as opposed to
10 giving one offerer or one consultant a leg up.

11 I've looked over and there's a number of
12 consultants that operate in this area that solicit
13 very widely to get basically, basically
14 information from government employees. It may not
15 -- in some cases, this one offered compensation.
16 Others seem to have more or less, you know, for
17 example, the retreat weekend to discuss, to
18 discuss anti-alcoholism treatments.

19 The preference would be if you're going
20 to have that type of discussion, is to have some
21 type of public forum on it where you present
22 basically our needs and solicit the views of

1 industry instead of giving only one consultant
2 firm or one company a leg up on the competition.

3 COLONEL GIBSON: This is Colonel Gibson.
4 In most of those cases what we simply do is refer
5 them to a public website. It's a government
6 website for those -- that gives them the
7 instructions on how to. And that's helpful to
8 them.

9 MR. BLEY: And in addition to that, for
10 example, we receive at -- through Congressional
11 offices and the like and in directorate letters
12 many questions about somebody wanting to sell a
13 certain either product to the government, a
14 certain -- utilize a certain technology, and our
15 answer's always the same, there's specific
16 provisions for this, this is where they can look
17 to to see what our current needs are, but it's, I
18 was going to say -- and, again, we receive
19 referrals from Congressman and Senators and from,
20 and from other types of federal officials. And,
21 again, what we prefer to do is to simply keep
22 everybody on a, on an even footing.

1 Now, as the questions here indicated,
2 our summary is the public service is a public
3 trust. You should always know the capacity you're
4 acting and know the capacity in which you're
5 appearing and use your official position and
6 official information for authorized purposes only.

7 Again, you can contact me. This is my
8 telephone number and this is my Web mail address.
9 Colonel Gibson can obviously act as an
10 intermediary himself.

11 Big thing here, identify the problems.
12 I'm glad to see, by the way, that you have --

13 You're very sensitive to these
14 appearance concerns. It's probably because of
15 your other employment as well that you're
16 particularly sensitive to them.

17 And it's obvious to me from the
18 discussions here that you not only are sensitive,
19 but are -- but can readily engage in a
20 back-and-forth talk and an analysis on the why of
21 these things and why we do what we do, which I
22 much appreciate.

1 I'll remain here to answer any
2 individual questions you have that you don't
3 believe are something you want to speak to in
4 front of the entire group.

5 COLONEL GIBSON: And this is Colonel
6 Gibson. One thing for you all. You need to write
7 that down. But I am going to send all of the
8 Board members copies of these slides and all of
9 the slides that were presented here personally,
10 and then of course we'll be posting those that our
11 speakers approve, we will post those on our
12 website as well.

13 I would ask the Board members that --
14 and you certainly are -- certainly Mr. Bley is at
15 your disposal for questions. He provided you with
16 his telephone number, et cetera.

17 I would ask you if you have a question
18 for him, please let me know as well, because I'm
19 the person between Miss Embrey and you and Mr.
20 Bley, one of my jobs is to keep track of what's
21 going on.

22 MR. BLEY: Right. And we put these

1 responses in writing. And in writing we're going
2 to indicate that, again -- again, you're going to
3 have access to this. It's not something that we
4 formally treat -- find privilege on. It's not
5 confidential. So he will have access to this as
6 well.

7 DR. POLAND: Greg Poland. Thank you
8 very much, Mr. Bley, and thank you in advance for
9 attending to the needs of the different committee
10 members.

11 (Applause)

12 DR. POLAND: All right. We are going to
13 have a lunch that will be a working lunch for
14 members of the Board. We'll remain right here.

15 Am I doing your part here?

16 COLONEL GIBSON: Um-hum.

17 DR. POLAND: Did I barge in?

18 COLONEL GIBSON: Okay. This is Colonel
19 Gibson. It's going to be a couple minutes. They
20 brought the lunch but forgot the plates. The
21 lunch is for Board members, preventive medicine
22 officers, distinguished guests and speakers.

1 Please remain here for the working lunch. We'll
2 go to executive session after that.

3 DR. POLAND: So we will before the
4 working lunch, Roger, have you go ahead and do the
5 EXECSEC brief.

6 The executive session is transcribed or
7 not?

8 COLONEL GIBSON: We're going to
9 transcribe the executive session this time.

10 We normally don't. As an administrative
11 session, we typically don't. But there's so much
12 that we're going to be talking about, that I need
13 that for my own personal record so we can ensure
14 that we're headed in the direction you want, you
15 guys want to go.

16 So we'll keep on transcribing.

17 DR. POLAND: Why don't we then go ahead
18 and proceed with the EXECSEC briefing.

19 And those slides are after tab 8, if you
20 want to follow along.

21 Right after Colonel Gibson presents his
22 slides, I'll present a few slides that will follow

1 up on discussion on the, on the Board and its
2 operation.

3 I think -- this is off record.

4 (Whereupon, the PROCEEDINGS were
5 continued.)

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