PROCEEDINGS

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

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

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

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

COLONEL GIBSON: This is Colonel Gibson.

As the acting designated federal official for the
Defense Health Board, a federal advisory committee
to the Secretary of Defense which serves as a
continuing scientific advisory body to the
Assistant Secretary of Defense for Health Affairs
and the Surgeon Generals of the military
departments, I hereby call this meeting to order.

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

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

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

So any administrative comments?

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

Restrooms, as you know, are outside.
For the Board members, a reminder to fill out your travel settlements, the 1352s, and get them mailed to Miss Ward so we can get you paid.

Refreshments. We'll have refreshments this afternoon.

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

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

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

And, finally, I want to thank Karen Triplett and Carolyn Reyes here for their efforts -- (Applause)

COLONEL GIBSON: -- Lisa Jarrett and

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

Thank you.

DR. KAPLAN: Kaplan. Roger, I have not in the last year received confirmation of CME credits. I know we don't get them for this one. Can somebody look into that for us?

COLONEL GIBSON: Absolutely.

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

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

DR. POLAND: Okay. Our first speaker this morning is Mr. Paul Bley. He is associate general counsel for Tricare Management Activity. He will do our -- we do an annual ethics briefing, and he'll do that for us today. Because this is the first meeting of the new board and then before we go into executive session later today, I think it's important that everybody be knowledgeable about the ethical issues related to membership on a federal advisory
board. It's a serious issue.

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

So, Mr. Bley, please proceed.

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

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

The bottom line for all special government employees and all government employees
is that public service is a public trust.

    Now, in a short presentation, I can't

school you on every ethics rule.

    The big thing that we're doing here,

though, is you can associate a name with a face.
I'm the person you can go to, and this will show
you who to contact in case you have an ethics
question, and it should give you enough
information to identify the most important, the
most common situations you'll face as a special
government employee.

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

    These standards, first of all, come from
Title 18 of the United States Code. Those are the
criminal provisions in the United States Code.
These are actually crimes if you commit any of these actions, crimes of, for example, in Chapter 11, bribery, graft and conflicts of interest.

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

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

Finally, there are the federal regulations. The five Code of Federal Regulations, it's Title 5: Parts 2634 which have to do with financial disclosures which you made on an annual basis. The one this year was put back for three months to put it as a calendar year.
rather than a fiscal year; Part 2635 which are the standards of conduct; Part 2637 and that's going to, going to, we're going to have that, that's going to be amended to give you a little more, little more outline of that which has to do with post-government service employment and, finally, 5 CFR 2640 which is an interpretation of some of the criminal provisions.

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

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

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

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

His principal team as far as, as policy at the highest levels is the DoD Standards of Conduct Office. Steve Epstein is the head of that
office. And then the DoD components of it also have appointed ethics officials.

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

How are the standards of conduct implemented in DoD?

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

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

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

Individuals can attend a widely attended gathering without violating the ethical principles. A widely attended gathering might be, for example, some type of a party or event which
has a wide distribution of individuals and give
you the opportunity to interact with them. And
this would be something that might otherwise be
termed a gift.

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

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

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

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

Now, for different types of activities,
for example, they discuss all these activities.
But for political activities, this would be the Office of Special Counsel website. For whistleblower activities, it would be Office of Special Counsel website.

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

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

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

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

You've acquired nonpublic information,
nonpublic government information during your career, and you can't use that for private gain, and that extends while you're in the military service, while you're serving as a special government employee and afterwards.

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

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

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

And, again, there are -- this seems pretty self-explanatory. You know, there certainly, there certainly would be opportunities for individuals to do that. And this is something, again, in general terms -- you'll actually see this also in the criminal -- in the, in the regulatory proscriptions as well, in the criminal proscriptions, you can't use your public office for private gain.
If it's something that's public, if it's, it's either nonpublic information, for example, use it solely for our purposes.

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

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

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

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

The saving grace of this provision is that it only, it only involves something done in connection with particular matters involving
specific parties and those that you participated
with for the government.

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

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

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

208 prohibits acting as government
official in matters that will have an economic
impact on the official's financial interests or affiliations.

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

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

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

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

What the emoluments clause involves is
the prohibition in the Constitution against
accepting -- holding an office of profit or trust
under the United States from accepting without the
consent of the Congress any present emolument,
office, or title of any kind from any king, prince
or a foreign power.

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

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

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

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

We've received one query on this issue
already which we're going to be taking care of.

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

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

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

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

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

And, again, very specific. And because of what you do here, you're probably not going to
be involved in either. For example, there's an absolute cooling off period for senior executives, there's a cooling off period on going back and communicating or representing concerning situations where, for example, you've been personally and substantially involved.

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

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

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

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

And, again, (a)(2) is a second provision involving representing back. It's on particular
matters that you weren't personally and
substantially involved in but somebody under your
supervision was.

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

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

Now, the prohibition on receiving gifts
applies fully to special government employees, but
many of the exceptions to that are useful in
making a determination that you can accept a gift.
And one that's particularly useful here
is accepting gifts based on outside business or
employment relationships.

For example, if your employer offers to
send you and your spouse on a retreat weekend,
retreat weekend off site, the part involving you
might be something, a retreat week and discuss
business, part of involving you might be something
related to your employment. For your spouse, that
would be something that perhaps would be a gift,
but because it’s based on your outside employment,
it could be accepted.

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

And one that’s used quite often, for
example, is the provision involving modest items
of food and drink, not part of a meal, which would
allow you to, for example, accept coffee and
doughnuts in the back of this room if it was from
a private party and the like.
You're prohibited from using either for the gain of a private interest, your own or anyone else's the inside information you get here. And that means you must know whether you're acting as a Defense Health Board member or a private person, you know, in any dealings that you do and in any information you get.

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

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

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

Now, that would be a good example of a situation where you could not accept that type of compensation because basically what they are asking for is, one, inside information and, two, it involves the use of your position.
And looking at the letter itself, it was clear it involved use of the position. It referenced, it referenced the fact that they knew the person was a member of the Defense Health Board.

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

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

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

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

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

MR. BLEY: Yes. This doesn't -- as a
special government employee, you're on government
duty now and conceivably again, I'm not sure how
you're compensated, you won't be compensated three
days from now. You're going to be a private
citizen.

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

Yes.

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

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

I'd suggest offhand that if Merck
appeared before this Board asking for some type of
action or something that would affect them financially -- and it doesn't have -- and I know they do, they are a large corporation and they do a lot of business -- that it would be best for you not to be the individual that asks them for contributions.

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

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

Yes.

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

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

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

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

MR. BLEY: And given my work with the Tricare Management Activity, we have another FACA (Federal Advisory Committee Act) which actually deals with pharmaceuticals, and we're quite familiar with the fact that it appears prevalent in the pharmaceutical industry that they have a lot of money available for different things. They may have unrestricted grants, they may have, they may have a lot of ways of getting money to individuals. And, frankly, they are comfortable in that arena, whether it's inviting people to dinner, presentations or to a three-day
weekend meeting at the Mandarin Oriental on Miami Beach. They are comfortable in that arena.

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

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

DR. POLAND: And that raises a question.

This is Greg Poland.

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

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

But as academics, many of us do have honorarium, advisory committee, clinical research protocol, studies, et cetera, that are funded by industry.
How would we handle those or deal with those?

MR. BLEY: Well, we're going to be taking a look at those in the context. And, again, some of these may be things that your institution is doing that you're not doing yourself.

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

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

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

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

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

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

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

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

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

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

DR. POLAND: So, again, Greg Poland, to
clarify, you know, for example, we have research studies or participate in advisory committees, et cetera. But that OG (Operation Guidelines) document is generated yearly, I guess, and sort of after the fact.

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

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

Questions, please come to me, get you a quick answer.
And, again, I take it my predecessor was -- I don't know how many questions you receive in the course of a year, Colonel Gibson.

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

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

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

And, again, then we'd be asking questions about what issues this committee faces, this Board faces and basically whether there's, whether there's a conflict, because the ultimate, the ultimate way of curing a conflict is to, is to basically recuse yourself from that particular issue when it comes before us so you cannot speak...
on it or, you cannot speak on it or affect the opinion of this Board.

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

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

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

But I as a professor, I get invited to give workshops and teach and give seminars. I get compensated, sometimes zero, sometimes a lot of money.
And it has really no impact on our function here at AFEB before this or the Defense Health Board because there are no matters we vote on actionwise or even influencing physical shake hand with these people. There is no relationship.

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

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

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

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

The things when you get down to a particular party in the government, the most
common one is the solicitation of a contract.

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

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

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

What to me the line that we would walk is we would not say, "This is the company we think you should buy vaccine from."
What we would do, however, is to look at different scientific aspects of vaccine development and say, "This approach or this approach is one that bears careful watching," or something like that.

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

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

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

So the earlier in the process you are,
the more you're acting in the requirements role is
the less likely that this will be deemed to be a
particular matter.

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

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

And, for example, a good example would
be, would be that representative from drug company
Triple A comes up here to speak, and you solicit
that individual for a particular contribution to
some program. That would be a good example of
something where it would appear that perhaps -- it
would certainly create the appearance that your
views were tied to that future action which wasn't
done on behalf of the government.

Any other questions on that?

Yes, sir.

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

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

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

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

COLONEL GIBSON: This is Colonel Gibson.

One of my jobs as the executive secretary is to
keep track of the days. There's actually a limit
on the actual days that you can serve as a special
government employee. I keep track of those. And
you're not compensated -- and there is a limit of
130 days per 365-day period that you can, in fact,
serve as a special government employee.
So I keep track of those. So tomorrow you're not working as a special government employee, and I --

DR. KAPLAN: Even though the appointment is --

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

DR. POLAND: Russ?

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

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

MR. BLEY: Well, some of the questions
-- and, again, probably this is a pretty common
one. Some of the questions certainly would be
different if the individual -- and I'm not going
to ask you before this Board if the individual
offered you compensation for doing so. That would
certainly be a different type of situation.

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

And in a lot of cases it's considered
that basically that type of notice when no
compensation is involved, okay, and you're not
giving this individual inside information, you're
not telling them basically what's been discussed
in nonpublic session or the like and giving that
person an advantage over other individuals, they
are not offering anything specifically because
they don't do it before this Board, so...

Please?

DR. SHAMOO: This is Dr. Shamoo. I

think this is a clearcut conflict of interest even
if you're not compensated whatsoever. You are
here to serve the public good and not to serve
somebody's friends or an institution or whatever
as a member of the Board.

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

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

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

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

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

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

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

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

Yes?

DR. PARKINSON: Mike Parkinson.

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

There is a legitimate
information-seeking function that as a former
military member and even now as an existing AFEB member, that people who want to do business with the Department of Defense and with the Military Health System have no clue about how the military assesses market opportunities, how it then acquires, how it then bids, how it whatever, and they basically need information about, "If I have a brand-new break-through product that does early detection of tuberculosis, who would I talk to? How would it work?"

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

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

In much the same vein in this regard,
there are universities and teaching centers inside the military that use curriculum materials all the time, you saw some of them yesterday, that are developed in the private sector.

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

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

MR. BLEY: You know, what DoD prefers, what DoD prefers in situations, and we get into this question with the question of advisory boards for our own employees, what DoD prefers is a
situation where if you're going to explain
something to offerers, is to have some type of
public forum.

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

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

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

   The preference would be if you're going
to have that type of discussion, is to have some
type of public forum on it where you present
basically our needs and solicit the views of
industry instead of giving only one consultant
firm or one company a leg up on the competition.

COLONEL GIBSON: This is Colonel Gibson.

In most of those cases what we simply do is refer
them to a public website. It's a government
website for those -- that gives them the
instructions on how to. And that's helpful to
them.

MR. BLEY: And in addition to that, for
example, we receive at -- through Congressional
offices and the like and in directorate letters
many questions about somebody wanting to sell a
certain either product to the government, a
certain -- utilize a certain technology, and our
answer's always the same, there's specific
provisions for this, this is where they can look
to to see what our current needs are, but it's, I
was going to say -- and, again, we receive
referrals from Congressman and Senators and from,
and from other types of federal officials. And,
again, what we prefer to do is to simply keep
everybody on a, on an even footing.
Now, as the questions here indicated,
our summary is the public service is a public
trust. You should always know the capacity you're
acting and know the capacity in which you're
appearing and use your official position and
official information for authorized purposes only.
Again, you can contact me. This is my
telephone number and this is my Web mail address.
Colonel Gibson can obviously act as an
intermediary himself.
Big thing here, identify the problems.
I'm glad to see, by the way, that you have --
You're very sensitive to these
appearance concerns. It's probably because of
your other employment as well that you're
particularly sensitive to them.
And it's obvious to me from the
discussions here that you not only are sensitive,
but are -- but can readily engage in a
back-and-forth talk and an analysis on the why of
these things and why we do what we do, which I
much appreciate.
I'll remain here to answer any individual questions you have that you don't believe are something you want to speak to in front of the entire group.

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

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

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

MR. BLEY: Right. And we put these
responses in writing. And in writing we're going
to indicate that, again -- again, you're going to
have access to this. It's not something that we
formally treat -- find privilege on. It's not
confidential. So he will have access to this as
well.

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

(Applause)

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

Am I doing your part here?

COLONEL GIBSON: Um-hum.

DR. POLAND: Did I barge in?

COLONEL GIBSON: Okay. This is Colonel
Gibson. It's going to be a couple minutes. They
brought the lunch but forgot the plates. The
lunch is for Board members, preventive medicine
officers, distinguished guests and speakers.
Please remain here for the working lunch. We'll go to executive session after that.

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

The executive session is transcribed or not?

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

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

So we'll keep on transcribing.

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

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

Right after Colonel Gibson presents his slides, I'll present a few slides that will follow...
up on discussion on the, on the Board and its 
operation.

I think -- this is off record.

(Whereupon, the PROCEEDINGS were 
continued.)

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