



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

January 7, 2009

Mr. John Simpson
Consumer Watchdog
1750 Ocean Park Boulevard, #200
Santa Monica, California 90405-4938

Re: FPPC Case No. 070773; John Reed

Dear Mr. Simpson:

In response to the sworn complaint you submitted regarding Dr. John Reed, the Fair Political Practices Commission ("Commission") has closed its file by issuing a warning letter. A copy of that warning letter is enclosed.

If you have any questions, or if you wish to speak with someone in the Enforcement Division about your correspondence, you may call me at (916) 322-5660. Thank you for your interest in the Commission.

Sincerely,

Kourtney C. Vaccaro
Division Chief
Enforcement Division

KCV:fp
Enclosure



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January 7, 2009

Liane M. Randolph, Esq.
Pillsbury Winthrop Shaw Pittman LLP
400 Capitol Mall, Suite 1700
Sacramento, California 95814-4419

Re: **Warning Letter**
FPPC Case No. 070773; John Reed

Dear Ms. Randolph:

We are sending this letter to you on behalf of your client Dr. John Reed. We trust that you will promptly provide him a copy of this letter.

As you are aware, the Fair Political Practices Commission (“Commission”) enforces the provisions of the Political Reform Act (the “Act”)¹. As you are also aware, the Commission received a complaint alleging that Dr. Reed violated the Act by attempting to use his official position to influence a decision by employees of the Independent Citizens Oversight Committee of the California Institute for Regenerative Medicine (CIRM) by asking those employees to reconsider their decision to deny a grant to a reported faculty member of the Burnham Institute for Medical Research (“Burnham Institute”). It is our understanding that at all relevant times, Dr. Reed was a CIRM board member, and the President and Chief Executive Officer of the Burnham Institute.

In our view, by submitting a “letter of appeal” to CIRM staff, Dr. Reed intended to influence a decision that had the potential to affect his economic interests. However, as more fully discussed below, it appears that Dr. Reed attempted to influence a prior-made governmental decision that could not be appealed.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Under the Act, no public official at any level of state or local government may make, participate in making, or in any way use or attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a disqualifying conflict of interest. (Section 87100.) To determine whether an individual has a disqualifying conflict of interest, the Commission generally employs the following sequenced analysis: (1) is the individual a public official; (2) did or will the official make, participate in making, or use or attempt to use the official position to influence a governmental decision; (3) does the official have economic interests directly or indirectly involved in the governmental decision; (4) what is the applicable materiality standard for each involved economic interest; and (5) whether it is reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest.² (See Regulation 18700.)

In this matter, the sequenced analysis appears to end with the inquiry of whether Dr. Reed, as a public official, attempted to use his official position to influence a governmental decision. With respect to a governmental decision that is within or before an official's agency, the official is attempting to use his official position to influence the decision if, for the purpose of influencing the decision, the official contacts any member, officer, employee, or consultant of the agency. (Regulation 18702.3.) While there is no question that Dr. Reed submitted a "letter of appeal" dated August 2, 2007, to employees of CIRM urging reconsideration of their rejection of the grant application of Burnham Institute faculty member Dr. David Smotrich, under the unique circumstances of this matter, it appears that Dr. Reed attempted to influence a prior-made governmental decision that could not be appealed; i.e., whether Dr. Smotrich satisfied CIRM's eligibility requirements to receive funding for a grant proposal.

It is our understanding that the eligibility requirements were plainly set forth in CIRM RFA 06-20 and that before CIRM denied the grant application in June 2006, both Dr. Smotrich and the Burnham Institute were provided opportunities to provide proof of eligibility but failed to do so. Dr. Reed nonetheless submitted an appeal of the eligibility issue. However, it appears that at all relevant times, CIRM's funding of grant applications was governed by a written policy stating the narrow grounds on which a grant decision could be appealed. The only grounds for appeal, which could only be made by an aggrieved grant applicant, were whether the applicant could "show that a demonstrable financial or scientific conflict of interest had a negative impact on the review process and resulted in a flawed review." (CIRM Grants Administration Policy for Academic and Non-Profit Institutions (eff. 3/30/07), p. 17, Section F.) Dr. Reed's letter of August 2, 2007, involved funding eligibility, which was not one of the two recognized grounds for submitting an appeal.

² The additional two steps of the analysis - whether the public generally exception applies and whether the individual is legally required to participate in the governmental decision - are inapplicable to this matter.

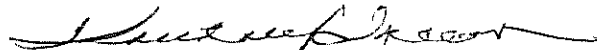
Liane M. Randolph, Esq.
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Thus, although this matter raises ethical concerns, we are closing this matter with a warning letter based on the foregoing discussion. Dr. Reed is advised that failure to comply with the provisions of the Act can result in an enforcement action against him, including monetary penalties of up to \$5,000 for each violation.

The Commission publishes forms and manuals to facilitate compliance with the provisions of the Act. If Dr. Reed needs forms or manuals, or guidance regarding his obligations, he may call the Commission's Toll-Free Advice Line at 1-866-275-3772. He may also visit our website at www.fppc.ca.gov.

If you have questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,



Kourtney C. Vaccaro
Division Chief
Enforcement Division

KCV:fp