FILE 2749—October 25, 2019

CONFLICT OF INTEREST

CITY COMMITTEE MEMBER EMPLOYED BY PRIVATE, NONPROFIT CORPORATION RECEIVING FUNDING FROM THE CITY

To: Kirby G. Oberdorfer, Deputy Director, City of Jacksonville Ethics, Compliance & Oversight Office (Jacksonville)

SUMMARY:

No prohibited conflict of interest would be created were a member of the City of Jacksonville's Opioid Abuse Prevention Committee to be employed by a private, nonprofit corporation that has a contract with the City to provide opioid related services or that, as a direct result of recommendations from the member's agency regarding funding awards, may have a contract with the City to provide opioid services in the future. Section 112.313(7)(b), Florida Statutes, acts as a "waiver" of conflict under Section 112.313(7)(a), Florida Statutes, and the elements necessary for a conflict under Section 112.313(3), Florida Statutes, are not present. CEOs 04-1, 07-11, and 18-6 are referenced.¹

QUESTION 1:

Would a prohibited conflict of interest be created were a member of the City of Jacksonville's Opioid Abuse Prevention Committee to be employed by a private, nonprofit corporation that has a contract with the City to provide opioid related services?

Under the circumstances presented, your question is answered in the negative.

In your letter of inquiry, additional materials supplied to our staff, and telephone conversations

¹ Prior opinions of the Commission on Ethics may be obtained from its website (www.ethics.state.fl.us).
between you and our staff, you relate that you make inquiry in behalf of a current member of the newly-created City of Jacksonville's Opioid Abuse Prevention (OAP) Committee. You relate that, in his private capacity, the member is employed by Ascension,² the largest national nonprofit healthcare system, as the Chief Clinical Officer for its Florida region. Prior to the creation of the OAP Committee,³ you explain that in June 2017, the City Council for the City of Jacksonville funded "Project Saves Lives," a pilot program developed to address the opioid epidemic in Duval County in conjunction with local service providers specializing in addressing opioid addiction issues, including one of the member's private capacity employer, St. Vincent's—the subsidiary corporation owned by Ascension that is providing services for the Project Saves Lives program. The pilot program was comprised of two components: (1) evaluation and treatment of patients for six months and (2) data collection, analysis, and reporting on the effectiveness of the opioid abuse treatment programs for the six months during treatment and six additional months after the treatment ends. You relate that the treatment component consisted of initial evaluation and referral of patients to a targeted opioid treatment program with either in-patient/residential or outpatient services. Thereafter, you explain that City Council extended the treatment series component of the program, designating Gateway as the provider of treatment services, and also authorized two (2) additional local hospital Emergency Departments to participate in the Project Saves Lives pilot program, wherein they would provide evaluations and referrals of patients to supplement the services being provided by St. Vincent's.⁴ However, you relate that Ascension and St. Vincent's are not currently receiving funding from the

² You relate that Ascension—a Catholic, not-for-profit healthcare corporation that owns and operates over 150 hospitals nationwide in twenty-one (21) states, including Florida—is the parent corporation established in 2012 by Ascension Health Systems. The Florida region is comprised of seven (7) hospitals, including all three (3) of the St. Vincent's Health System, Inc. hospitals in the state. As such, St. Vincent's is a wholly-owned subsidiary of Ascension Health, Inc.
³ You relate that the City Council created the OAP Committee on March 26, 2019.
⁴ Out of the initial $1,467,289.00 appropriated for the Project Saves Lives opioid epidemic pilot program, you relate that $86,932 went St. Vincent's, who executed its contract on November 17, 2017 for a term of twelve (12) months following the first date services were provided to patients.
City for the Project Saves Lives program. Specifically, you relate that although St. Vincent's currently has a contract with the City for the services it provides for the Project Saves Lives program, the contract does not provide for compensation to St. Vincent's.

As it relates to his private capacity employment with Ascension, you relate that the member—who specializes and is board certified in emergency medicine—works in conjunction with the Chief Operation Officer and the Chief Nursing Officer of the Florida regions to oversee all of the Florida hospitals owned by Ascension, including St. Vincent's three (3) hospitals. You further relate that the member is also employed as a physician at St. Vincent's, but that neither he, his spouse, nor his child is an officer, partner, director, proprietor, or owner of Ascension or St. Vincent's. As Chief Clinical Officer, the member supervises all Chief Medical Officers of the Ascension Florida hospitals and is responsible for clinical, quality of care, and physician related issues. In addition to his private capacity employment duties, the member works with the Project Saves Lives opioid program coordinated with a separate nonprofit corporation, Gateway Community Services, Inc. (Gateway), St. Vincent's, and various other local hospital Emergency Departments, advising on how the program works and answering questions from fellow physicians regarding the implantation of the Project Saves Lives program into the current hospital structure for participating Emergency Departments. Nevertheless, you explain that, in his private capacity roles, the member is not personally involved in obtaining Project Saves Lives funding (or any other funding) for St. Vincent's from the City and that the member's salary as Chief Clinical Officer for Ascension is not funded through money provided by the City. Rather, you relate that the member's only involvement with the City is through his work as the designated Contract Manager on behalf of St. Vincent's for its Project Saves Lives agreement with the City and his recent appointment to the OAP Committee, which the City Council created in order to continue the success of the Project Saves Lives program. Based upon the member's professional

5 You explain that, on September 24, 2019, the City Council approved the FY 2019-2010 budget that included an appropriation of $1,191,423.00 to Gateway for the Project Saves Lives program.
6 You relate that the member has advised that another St. Vincent's employee will serve this function in the future if necessary to avoid any conflict of interests.
qualifications and experience in emergency medicine treating patients impacted by addiction, you explain that he was recently was nominated\(^7\) by the Mayor of the City of Jacksonville to serve as the designated Medical Professional, Emergency Department member of the OAP Committee, in accordance with Jacksonville Ordinance Code Section 84.202, which provides, in part:

- **Membership; appointment and removal; terms of office.**—(a) *Composition.* The Committee shall consists of nine members to be appointed by the Mayor within the following categories:
  1. Medical Professional, Program Treatment;
  2. Medical Professional, Emergency Department;
  3. Mental Health professional;
  4. Addiction Treatment Provider;
  5. Certified Recovery Peer Specialist or Certified Recovery Support Specialist;
  6. Member from a Veteran Services Organization;
  7. Member from the Health Department;
  8. Member from a Homeless Advocacy organization; and
  9. Member from Jacksonville Sheriff's Office or Jacksonville Fire and Rescue Department.

The appointees shall be confirmed by City Council.

Pursuant to Jacksonville Ordinance Code Section 84.203, the OAP Committee is responsible, in part, for (1) reviewing and assessing the City's needs with respect to opioid addiction and recovery for funding opioid programs and (2) recommending programs, grant awards, and annual lump sum appropriations for the opioid abuse program funding. However, you relate that the Project Saves Lives program is excluded from the opioid abuse-related programs that the OAP Committee recommends funding for. Specifically, you explain that the Project Saves Lives funding is recommended to City Council by the Mayor as part of the City's annual budget and that the City Council will either approve or deny the recommended funding. As such, the OAP Committee will not have any involvement in, or oversight over, the additional funding and/or contracts for the Project Saves Lives opioid program.

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\(^7\) You relate that the nomination took place on May 28, 2019.
Two prohibitions of the Code of Ethics for Public Officers and Employees are relevant to your inquiry. The first is Section 112.313(7)(a), Florida Statutes, which states:

**CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.**—  
(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee...; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

However, Section 112.313(7)(b), Florida Statutes, provides:

This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

Absent an exemption, Section 112.313(7)(a) would prohibit the member from holding employment with the nonprofit, a business entity (defined in Section 112.312(5), Florida Statutes, to include corporations) doing business with his agency, and would prohibit the subject employee from having a contractual relationship which would create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or which would impede the full and faithful discharge of his public duties. Here, although the member currently serves as the Contract Manager in behalf of St. Vincent's for the agreement between the nonprofit and the City of the Project Saves Lives opioid program, any conflict of interest that might exist for the member under Section 112.313(7)(a), due to his employment with the nonprofit, would be negated by Section 112.313(7)(b), a statutory provision which negates conflicts under Section 112.313(7)(a) where a particular employment is required or permitted by law or ordinance in order for the public officer to hold his position, such as is the case here under the City's OAP Committee ordinance (Medical Professional, Emergency Department). We have found that such a provision
essentially works as a "waiver" of conflict "by recognizing that certain credentials are so vital to the expertise and operation of a public [committee] that the otherwise conflicting business/client connections of certain members must yield to the public purpose of a portion of the [committee's] membership possessing such professional training and practice." See, CEO 04-1 and other decisions of the Commission cited therein.

The second prohibition of the Code of Ethics that is relevant to your inquiry is Section 112.313(3), Florida Statutes, which states:

DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business or when such offices are on property wholly or partially owned by the legislator. This subsection shall not affect or be construed to prohibit contracts entered into prior to:

(a) October 1, 1975.
(b) Qualification for elective office.
(c) Appointment to public office.
(d) Beginning public employment.

This section prohibits a public employee from acting in an official capacity as a purchasing agent to purchase, rent, or lease any realty, goods, or services for his own public agency from a business entity of which the public officer or his spouse or child holds certain ownership or leadership positions. Here, you relate the member is only an employee of the nonprofit and that neither he nor his spouse or child holds certain ownership or leadership positions required to trigger
the applicability of the first part of the statute. As such, we find that the first part of Section 112.313(3) is inapplicable and there is no prohibited conflict.

The second part of the statute prohibits a public officer from acting in a private capacity to sell services to his own agency or to any agency of his political subdivision. However, the Commission has previously found that, when a governmental agency merely provides grants or funding to an entity (e.g., a nonprofit) that in turn provides services to a specific clientele (e.g., citizens with needs) that the governmental agency itself has no legal obligation to serve, this does not constitute the selling of services within the meaning of Section 112.313(3). CEO 18-6 and CEO 07-11. Still, unlike nonprofits such as Gateway, St. Vincent's does not receive funding from the City Council to assist it in providing services for the Project Saves Lives opioid program to persons who—despite benefiting from the City's policy decision to address the opioid epidemic—the City is under no legal obligation to provide such services. As such, no prohibited conflict would be created under Section 112.313(3).

Thus, under the specific circumstances of your inquiry, we find that no prohibited conflict of interest would be created were the member of the City of Jacksonville's Opioid Abuse Prevention Committee to be employed by the nonprofit that currently has a contract with the City to provide opioid related services to citizens with opioid addictions.

Question 1 is answered accordingly.

**QUESTION 2:**

Would a prohibited conflict of interest be created were a member of the City of Jacksonville's Opioid Abuse Prevention Committee to be employed by a nonprofit that, as a result of recommendations from the member's agency regarding funding awards, may have a contract with the City to provide opioid services in the future?
Under the circumstances, Question 2 is answered in the negative.

Based upon the discussion in Question 1, above, Section 112.313(3) also is inapplicable in this instance. However, as discussed above, absent an exemption, Section 112.313(7)(a) would prohibit the member from holding employment with the nonprofit, a business entity doing business with his agency. Nevertheless, as explained above, any conflict of interest that might exist for the member under Section 112.313(7)(a) due to his employment with the nonprofit, including future contracts between the nonprofit and the City resulting from funding awards recommended by the OAP Committee, would be negated by Section 112.313(7)(b), under the specific facts and circumstances of this inquiry.  

However, as a member of the OAP Committee, to the extent that the member is presented with measures/matters that would affect his private-capacity employer(s), he is subject to the voting/participation conflicts law of Sections 112.3143(3)(a) and 112.3143(4), Florida Statutes, which provide:

Voting conflicts.—No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. [Section 112.3143(3)(a), Florida Statutes].

…No appointed public officer shall participate in any matter which would insure to the officer's special private gain or loss; which the
Question 2 is answered accordingly.

cc: Kirby G. Oberdorfer, Esquire

KBR/det/cca

officer knows would insure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would insure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter. [Section 112.3143(4), Florida Statutes].

And, see CE Form 8B at www.ethics.state.fl.us (found within the "Forms" tab that is located near the bottom left-hand side of the webpage).
Deanna,

Thank you for all of your work on the opinion requests on behalf of the City of Jacksonville Opioid Abuse Prevention Committee members and prospective member, and for your time in discussing this request with me.

As we discussed, the City Council approved the FY 2019-20 budget last night that included an $1,191,423 appropriation to Gateway Community Services for the Project Saves Lives program. The new contract with Gateway, St. Vincent’s and the other Emergency Room departments will be effective October 1, 2019-September 30, 2020. The Project Saves Lives program in FY 2019-2020 will utilize the same structure that is currently in place. The new contracts will be amendments to the original contract with the new appropriation amount for Gateway and new term of the contract.

Additionally, I confirmed that the Peer Recovery Specialist paid by Gateway initiates and administers the intake process for the Project Saves Lives program. None of the emergency room departments, including St. Vincent’s, perform intake services or duties for the Project Saves Lives program. The emergency room personnel at each participating hospital/facility stabilize an overdose patient when the patient presents to the hospital/facility and then the Peer Recovery Specialist educates the patient about the Project Saves Lives program.

Finally, I have attached the forms indicating whether each of the Opioid Abuse Prevention Committee members or prospective member prefer to have their name included in the opinion from the State Ethics Commission.

Please let me know if you have any additional questions regarding these opinion requests. I hope you have a great day and remainder of the week.
Received. Will be in touch.

Thanks,

Chris Anderson
C. Christopher Anderson, III
Executive Director and General Counsel
Florida Commission on Ethics
(850) 488-7864

From: Oberdorfer, Kirby <KOberdorfer@coj.net>
Sent: Tuesday, July 09, 2019 4:47 PM
To: Anderson, Chris <ANDERSON.CHRI@leg.state.fl.us>
Cc: Hodges, Lawsikia <LHodges@coj.net>
Subject: RE: Request for Informal Advisory Opinion Regarding Conflict of Interest Inquiry

Dear Mr. Anderson,

On behalf of Dr. Huson Gilberstadt, a member of the City of Jacksonville’s Opioid Abuse Prevention Committee, I am hereby submitting the attached request for an informal advisory opinion regarding his conflict of interest inquiry. Please let me know if I can be of any assistance with this matter or if you have any questions or need further information for this request.

I hope you enjoyed the 4th of July holiday and are having a good week so far.

Sincerely,

Kirby G. Oberdorfer
Deputy Director
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(904) 255-5510
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MEMORANDUM

TO: C. Christopher Anderson, III, Executive Director and General Counsel
State of Florida Commission on Ethics
325 John Knox Road
Building E, Suite 200
Tallahassee, FL 32303

FROM: Kirby Oberdorfer, Deputy Director of Ethics, Compliance & Oversight and
Lawskia Hodges, Deputy General Counsel Government Operations Department

RE: SEC Conflict of Interest Inquiry; Opioid Abuse Prevention Committee Member Dr.
Huson Gilberstadt

DATE: July 9, 2019

I. INTRODUCTION

Pursuant to Rules 34-6.002 and 34-6.004, on behalf of Dr. Huson Gilberstadt and in accordance with his request, we are writing to request an informal written advisory opinion on the ethics laws inquiry set forth below. Dr. Gilberstadt has requested an opinion be issued by the Commission on Ethics as soon as possible. Please be advised that the Office of General Counsel and the Office of Ethics, Compliance & Oversight have discussed this inquiry with you in prior telephone conversations.

II. FACTUAL BACKGROUND

On May 28, 2019, Dr. Gilberstadt was nominated by the Mayor of the City of Jacksonville to serve as a member of the newly-created Opioid Abuse Prevention Committee in accordance with Jacksonville Ordinance Code section 84.202 (see Appendix A for all relevant Code provisions). Dr. Gilberstadt is currently employed by Ascension, the largest national non-profit healthcare system, as the Chief Clinical Officer for its Florida region. He specializes and is board certified in emergency medicine, and is a Fellow of the American College of Emergency Medicine.

In June 2017, the City Council for the City of Jacksonville funded a pilot program, known as “Project Saves Lives,” to address the opioid epidemic in Duval County. The Project Saves Lives pilot program was developed in conjunction with local service providers specializing in addressing opioid addiction issues, including River Region Human Services, Inc. (“River Region”), Gateway Community Services, Inc. (“Gateway”) and St. Vincent’s Health System, Inc. (“St. Vincent’s”). The City contracted with River Region, Gateway and St. Vincent’s

1 A total of $1,467,289.00 was initially appropriated for the Project Saves Lives opioid epidemic pilot program, including (1) $643,081 to River Region; (2) $679,275 to Gateway; and (3) $86,932 to St. Vincent’s. St. Vincent’s
implement the Project Saves Lives pilot program through their targeted treatment programs and services designed to reduce addiction and dependence on opioid drugs. The Project Saves Lives pilot program was comprised of two components: (1) evaluation and treatment of patients for six (6) months and (2) data collection, analysis and reporting on the effectiveness of the opioid abuse treatment programs for the six (6) months during treatment and an additional six (6) months after the end of treatment. The treatment component consisted of initial evaluation and referral of patients by St. Vincent’s to a targeted opioid treatment program with either in-patient/residential or outpatient services.

In May 2018, the Jacksonville City Council extended the treatment services component of the Project Saves Lives pilot program for an additional period of May 16, 2018 through September 30, 2018, and designated Gateway as the provider of treatment services during the additional time period. The City Council also authorized two (2) additional local hospital Emergency Departments to participate in the Project Saves Lives pilot program and provide evaluations and referrals of patients to supplement the services being provided by St. Vincent’s. As part of this extension, St. Vincent’s and the City of Jacksonville executed Amendment No. 1 to the existing contract for services that incorporated a Revised Scope of Services and other terms, but did not include an increase in the original contract amount of $86,932.00. Subsequently, the City Council approved an additional extension of the Project Saves Lives opioid program for fiscal year 2018-2019, appropriating $1,149,945.00 to Gateway and authorizing up to seven (7) local hospital Emergency Departments to participate in the program. In conjunction with the appropriation for fiscal year 2018-2019, St. Vincent’s and the City of Jacksonville began negotiating Amendment No. 2 to the contract for services for the period of October 1, 2018-September 30, 2019. As part of this agreement, St. Vincent’s agreed to perform intake duties and duties related to data collection and analysis regarding the Project Saves Lives program, but did not receive any compensation from the City for its performance of services under Amendment No. 2.

To continue the success of the Project Saves Lives program, the City Council created a new Opioid Abuse Prevention Committee on March 26, 2019. The committee is comprised of nine (9) members appointed by the Mayor and confirmed by City Council. Each of the nine (9) members is required to meet specified professional qualifications for his or her committee position, such as (1) Medical Professional, Program Treatment; (2) Medical Professional, Emergency Department; (3) Mental Health Professional; and (4) Certified Recovery Peer Specialist or Certified Recovery Support Specialist. Jacksonville Ordinance Code § 84.202(a).

Per Jacksonville Ordinance Code section 84.203, the Opioid Abuse Prevention Committee is responsible for (1) reviewing and assessing the City’s needs with respect to opioid addiction and recovery for funding opioid programs and (2) recommending programs, grant awards and annual

executed its contract on November 15, 2017 for a term of twelve (12) months following the first date services were provided to patients. The funding for the contract occurred in City of Jacksonville’s fiscal year 2017-2018.

2 Amendment No. 2 between St. Vincent’s and the City has not yet been executed. However, both St. Vincent’s and the City have been complying with the terms of Amendment No. 2 during the City’s fiscal year 2018-2019, the effective date of Amendment No. 2, as contemplated under Amendment No. 2.
lump sum appropriations for the opioid abuse program funding. The opioid abuse program will be funded through either contributions to the Opioid Abuse Program Trust Fund or appropriations from City Council. Jacksonville Ordinance Code §§ 84.401 and 111.250. Funding from the opioid abuse program will be primarily awarded through grants to eligible applicants based upon a three-tiered structure determined by the size of the applicant organization: (1) grants valued at up to $20,000; (2) grants valued at more than $20,000, but less than $150,000; and (3) grants valued at $150,000 or more. Jacksonville Ordinance Code §§ 84.402-05. Members of the Opioid Abuse Prevention Committee will develop and approve the standard application form and process for the grant applications. Jacksonville Ordinance Code § 84.406. All grant awards from the opioid abuse program funding will be based upon the review, evaluation and scoring of each application performed by a separate Opioid Trust Fund Grants Committee. Jacksonville Ordinance Code §§ 84.301, 84.407-08. The Opioid Trust Fund Grants Committee’s scoring recommendations shall be provided to the Opioid Abuse Prevention Committee for recommendation of award amounts consistent with the evaluation and scoring of the Grants Committee. Jacksonville Ordinance Code §§ 84.301, 84.408. Grant awards of $20,000 or less will be made directly to organizations through the City’s Grant Administrator and awards of more than $20,000 will be recommended by the Opioid Abuse Prevention Committee to City Council for approval, unless the City Council has previously made an appropriation for an award of more than $20,000 or less than $150,000 to an organization. Jacksonville Ordinance Code §§ 84.203(b), 84.402-05.

Based upon his professional qualifications and extensive experience in emergency medicine treating patients impacted by addiction, Dr. Gilberstadt was recently nominated by the Mayor and confirmed by City Council to serve as the designated Medical Professional, Emergency Department member of the Opioid Abuse Prevention Committee. In his employment as Chief Clinical Officer of the Florida region for Ascension, Dr. Gilberstadt works in conjunction with the Chief Operating Officer and the Chief Nursing Officer of the Florida region to oversee all of the Florida hospitals owned by Ascension, including St. Vincent’s three (3) hospitals. As Chief Clinical Officer, Dr. Gilberstadt supervises all Chief Medical Officers of the Ascension Florida hospitals and he is responsible for clinical, quality of care and physician related issues. He is also employed as a physician at St. Vincent’s, but neither he, his spouse nor child is an officer, partner, director, proprietor or owner of Ascension or St. Vincent’s. In addition to his employment duties, Dr. Gilberstadt works with the Project Saves Lives opioid program coordinated with Gateway, St. Vincent’s and other various local hospital Emergency Departments, advising on how the program works and answering questions from fellow physicians regarding the implementation of the Project Saves Lives program into the current hospital structure for participating Emergency Departments. He also serves as the designated Contract Manager on behalf of St. Vincent’s for its Project Saves Lives agreement with the City, but has advised another St. Vincent’s employee will serve this function in the future if necessary.

3 Ascension is a Catholic, not-for-profit healthcare corporation that owns and operates over 150 hospitals nationwide in twenty-one (21) states, including Florida. The Ascension Florida region is comprised of seven (7) hospitals, including all three (3) of the St. Vincent’s hospitals in Jacksonville and Clay County. St. Vincent’s is a wholly-owned subsidiary of Ascension Health, Inc. Ascension is the parent corporation established in 2012 by Ascension Health Systems.
to avoid a conflict of interest. Additionally, upon request by City representatives, Dr. Gilberstadt provides information and explanation of data related to the utilization and effectiveness of the Project Saves Lives program. Dr. Gilberstadt is not personally involved in obtaining Project Saves Lives program funding or any other funding for St. Vincent’s from the City. Additionally, his salary as Chief Clinical Officer for Ascension is not funded through money provided by the City.

III. DISCUSSION

ISSUES

Whether a prohibited conflict of interest arises under Florida Statutes section 112.313(3) and/or section 112.313(7) for Dr. Gilberstadt, a member of the Opioid Abuse Prevention Committee, as a result of:

(1) the current agreement between St. Vincent’s, with whom he is employed, and the City of Jacksonville for the Project Saves Lives opioid program; or

(2) potential future contracts between St. Vincent’s and the City of Jacksonville resulting from recommendations by the Opioid Abuse Prevention Committee?

LAW

Florida Statutes section 112.313(3) prohibits a public official from doing business with his or her own agency by either purchasing services for his/her agency in his/her official capacity or by selling services in his/her private capacity to his/her agency or any agency of the political subdivision encompassing the agency. The selling of services, goods or realty is a vital element to the application of section 112.313(3). CEO 18-6; CEO 92-43. When a governmental agency merely provides grants or funding to an entity that in turn provides services to a specific clientele and the governmental agency has no legal obligation to serve the clientele, the Commission on Ethics has consistently determined that this does not constitute the selling of services within the meaning of section 112.313(3). CEO 18-6; CEO 07-11; CEO 92-43.

Additionally, a public official is also prohibited by Florida Statutes section 112.313(7)(a) from having a contractual or employment relationship with a business which in turn is doing business with or is regulated by his/her agency. To ascertain whether there is a prohibited conflict of interest under section 112.313(7)(a), the agency of the public official must be determined. CEO 94-36. Generally, an agency is the lowest level of government where a person can exert influence. CEO 99-7; CEO 93-31.

ANALYSIS

Although section 112.313(3) generally prohibits doing business with one’s own agency, there does not appear to be a conflict of interest under section 112.313(3) with respect to the current agreement between St. Vincent’s and the City of Jacksonville, and any future contracts arising from recommendations by the Opioid Abuse Prevention Committee. In enacting the Project
Saves Lives program and appropriating money to Gateway for treatment related to combat opioid addiction, the City Council made a policy determination to address the opioid epidemic. The City Council has no legal obligation to serve citizens with opioid addiction. Additionally, in providing the funding to Gateway for the Project Saves Lives opioid program and contracting with St. Vincent’s for intake and data services related to the program, the City is not receiving any benefit or anything of value in return. Thus, the Opioid Abuse Prevention Committee and the City are not purchasing any services from St. Vincent’s and Dr. Gilberstadt is not selling any services in his private capacity on behalf of St. Vincent’s to the City. CEO 18-6; CEO 07-11; CEO 92-43.

However, if the Commission on Ethics determines that the City is purchasing services from St. Vincent’s and St. Vincent’s is selling services to the City through the Project Saves Lives program, it appears that any conflict of interest arising from the current agreement between St. Vincent’s and the City of Jacksonville should be negated under the grandfather clause in section 112.313(3)(c) and/or 112.316 because the contract was awarded on October 1, 2018, more than seven (7) months prior to Dr. Gilberstadt being appointed to public office as a member of the Opioid Abuse Prevention Committee. See CEO 96-32. Section 112.313(3)(c) expressly exempts from any conflict under this subsection contracts entered into prior to appointment to public office. Similarly, the Commission on Ethics has applied section 112.316 to grandfather out a conflict for contracts prohibited by section 112.313(7)(a) when the contracts were executed prior to the appointment to public office. In enacting section 112.316, the Florida Legislature made clear that the conflict of interest provisions in sections 112.313(3) and (7)(a) are not to be interpreted and applied so as to prohibit a public official or employee from engaging in business that “does not interfere with the full and faithful discharge by such officer [or] employee . . . of his duties to . . . the county, city or other political subdivision of the state involved.” § 112.316, Fla. Stat. (2018). In applying section 112.316 to negate conflicts under sections 112.313(3) and 7(a), the Commission on Ethics has recognized that a public officer is unable to disregard or thwart his public duties in exchange for his private interests when the public official has not taken office or in circumstances in which the public official did not have any public authority or responsibility in the award of the contracts at issue. CEO 06-25; CEO 01-7; CEO 95-13.

Additionally, if it is determined that the City is purchasing services from St. Vincent’s and St. Vincent’s is selling services to the City through the opioid program, there also does not appear to be a conflict of interest under either part of section 112.313(3) with respect to future contracts between St. Vincent’s and the City of Jacksonville arising from recommendations by the Opioid Abuse Prevention Committee for two reasons: (1) Dr. Gilberstadt is only an employee of St. Vincent’s and (2) he does not and will not have any personal involvement in the sale of services by St. Vincent’s to the City of Jacksonville. The first part of section 112.313(3) is not applicable because Dr. Gilberstadt is only an employee of St. Vincent’s and neither Dr. Gilberstadt, nor his spouse or child serve as an officer, partner, director, proprietor or owner of St. Vincent’s. Thus, Dr. Gilberstadt would not be acting in his official capacity as a member of the Opioid Abuse Prevention Committee to purchase services from a business entity of which he or his spouse/child has a requisite leadership/governance role under section 112.313(3). CEO 12-13; CEO 96-19. Additionally, the second part of section 112.313(3) would not be applicable because Dr. Gilberstadt, as an employee, will not be personally involved in a private capacity in
any efforts by St. Vincent’s to sell its services for the opioid program to the City, such as sales efforts, contract negotiations or contract management. Although Dr. Gilberstadt currently serves as the Contract Manager on behalf of St. Vincent’s for the agreement between St. Vincent’s and the City of Jacksonville for the Project Saves Lives opioid program, he has advised that he will not continue in this role if necessary to avoid a conflict of interest. Additionally, in providing information to City representatives at their request regarding the efficacy of the Project Saves Lives program, Dr. Gilberstadt is merely reporting on the implementation and utilization of the program for patients participating in the program. His contact with the City is not in conjunction with making any request or sales pitch to the City for opioid program funding or provision of services by St. Vincent’s. Unlike the prior opinions where the State Ethics Commission has determined that an official was personally involved in the sale to his/her or governmental agency, Dr. Gilberstadt is not and will not be soliciting or requesting funding, handling funding received from the City, marketing services provided by St. Vincent’s, or negotiating any contracts between St. Vincent’s and the City. Thus, he will not be acting in a private capacity to sell services on behalf of St. Vincent’s to the City of Jacksonville. CEO 19-10; CEO 12-13; CEO 96-19; CEO 96-32; CEO 94-3.

With respect to section 112.313(7)(a), any apparent conflict of interest for Dr. Gilberstadt under section 112.313(7)(a) from an award or recommendation by the Opioid Abuse Prevention Committee to his employer, St. Vincent’s, appears to be obviated by the exemption in section 112.313(7)(b). As a member of the Opioid Abuse Prevention Committee, Dr. Gilberstadt’s agency for purposes of section 112.313(7)(a) appears to be the Opioid Abuse Prevention Committee because the committee is authorized to make award recommendations in excess of $100,000 and thus does not constitute an advisory body under Florida Statutes section 112.312(1). The exemption in section 112.313(7)(b) appears to negate any conflict on the face of section 112.313(7)(a), as Dr. Gilberstadt is required by the ordinance creating the Opioid Abuse Prevention Committee to hold the professional qualification of Medical Professional, Emergency Department. CEO 04-1; CEO 84-63. In accordance with the reasoning in CEO 04-1, the ordinance creating the Opioid Abuse Prevention Committee has created a waiver of the conflict of interest by “recognizing that certain credentials are so vital to the expertise and operation of the [Opioid Abuse Prevention Committee] that the otherwise conflicting business/client connections of [Dr. Gilberstadt] must yield to the public purpose of the . . . [committee’s] membership possessing such professional training and practice.” CEO 04-1. Accord CEO 84-63.
Appendix A

Chapter 84 - OPIOID ABUSE MITIGATION

PART 1. - GENERAL PROVISIONS

Sec. 84.101. - Intent.

Florida has seen a dramatic increase in the number of deaths due to opioid-related overdose deaths, including those related to synthetic opioids. In 2017, the State of Florida declared a state of emergency in response to the state's epidemic of opioid addiction. The City of Jacksonville has also seen a spike in the number of opioid deaths in recent years and has taken proactive steps to provide funding and treatment for opioid addiction in Ordinance 2017-426-E, and further continued by Ordinances 2018-253-E, 2018-504-E and 2018-683-E. The Council finds that ongoing measures are necessary to address this public health and safety emergency. The Council is committed to innovative programs and treatment which can provide a holistic and multi-pronged approach to addiction - including counseling, assistance and access to treatment. The Council desires to establish a committee of professionals who can make recommendations on treatment and funding levels and also to establish a separate committee which can review, evaluate and score organizations providing the necessary services to recommend award of funding received in the Opioid Abuse Program Trust Fund in Section 111.250, Ordinance Code.

Sec. 84.102. - Sunset Provision.

This Chapter shall sunset on October 1, 2021, unless, prior to the Sunset date, the City Council shall pass legislation to extend the Chapter.

PART 2. - OPIOID ABUSE PREVENTION COMMITTEE

Sec. 84.201. - Establishment.

There is hereby established a committee to be known as the Opioid Abuse Prevention Committee (hereinafter known as the Committee).

Sec. 84.202. - Membership; appointment and removal; terms of office.

(a) Composition. The Committee shall consist of nine members to be appointed by the Mayor within the following categories:

(1) Medical Professional, Program Treatment;
(2) Medical Professional, Emergency Department;
(3) Mental Health Professional;
(4) Addiction Treatment Provider;
(5) Certified Recovery Peer Specialist or Certified Recovery Support Specialist;
(6) Member from a Veteran Services Organization;
(7) Member from the Health Department;
(8) Member from a Homeless Advocacy Organization; and
(9) Member from Jacksonville Sheriff's Office or Jacksonville Fire and Rescue Department.

The appointees shall be confirmed by City Council.

(b) There shall also be a Council Member Liaison to the committee appointed annually by the Council President. This is a non-voting position and shall not be considered a member of the Committee for Sunshine purposes.

(c) Terms. Members shall be appointed for three-year staggered terms, expiring September 30; but shall serve until their successor shall be appointed and confirmed. Of the initial appointments, three members shall serve for one-year terms, three members shall serve two-year terms, and three members shall serve for three years. No member shall serve for more than two consecutive full terms; but appointments to fill vacancies for partial terms (less than 50 percent of a full term) and initial appointments under the preceding sentence for less than 18 months shall not be deemed to be full terms.

(d) Removal. Members shall serve at the pleasure of the Mayor and may be removed at any time.

Sec. 84.203. - Functions, powers and duties.

In addition to such powers, duties and authority as may be set forth elsewhere in the Ordinance Code, the Committee is hereby authorized to:

(a) Review and assess the annual needs of the City as to opioid addiction and opioid recovery for funding opioid programs not otherwise funded by City grants or funds, based on presentations, studies, and reports submitted to the Committee;

(b) Recommend programs for award of grants under Sections 84.403, 84.404, and 84.405, Ordinance Code, to the Grant Administrator and include in such recommendation a suggested amount of funding for each program recipient; recommendations may be made annually following appropriations by Council, for Sections 84.404 and 84.405, or as needed, but need not be awarded annually if the Committee determines that the funding would be more meaningfully used upon accumulation over more than one fiscal year;

(c) Participate in on-site evaluations of recipient programs;

(d) Attend orientation meetings, the annual training course required in Section 84.204(h), Ordinance Code, and any other meetings related to ethics, public records and open meetings laws for Committee members;
(e) Recommend awards and the allocation of annual lump sum appropriations for Opioid Abuse Program funding based on the review, evaluation and scoring of each requesting recipient pursuant to Part 4 of this Chapter.

Sec. 84.204. - Organization and proceedings.

(a) Officers. The Committee shall select a chairperson and vice-chairperson from among its members to serve for a one-year term commencing in October of each year and may create and fill such other offices as it may deem necessary or desirable.

(b) Rules of procedure. The Committee shall establish rules of procedure necessary to its governing and the conduct of its affairs, consistent with the applicable provisions of the Ordinance Code.

(c) Voting; quorum. All decisions and recommendations of the Committee shall require a concurring vote of a majority of the members present. Five members shall constitute a quorum. Tie votes shall result in the subject agenda item being continued to the next meeting of the Committee.

(d) Administrative support. The Committee shall receive staff support from the Office of the Grant and Contract Compliance.

(e) Meetings. The Committee shall meet as often as necessary to effectuate its purpose, but at least two times a year. All meetings shall be open to the public. The Committee shall comply with law regarding receiving public comment and public participation, where applicable.

(f) Notice. Notice of meetings shall be posted at least two days in advance on the City of Jacksonville web events calendar. No other advertisement or notification is required.

(g) Compensation. Members shall serve without compensation, pension or retirement benefits; however members may be compensated for travel expenses as provided in Chapter 106, Part 7, Ordinance Code.

(h) Compliance. The Committee shall be subject to the provisions of Chapter 112, Part III, Florida Statutes, and Chapters 50, 58, and 602 of the Ordinance Code, except as may be otherwise set forth in this Chapter.

PART 3. - OPIOID TRUST FUND GRANTS COMMITTEE

Sec. 84.301. - Purpose.

The Opioid Trust Fund Grants Committee is created to review, evaluate and score applications submitted pursuant to this Chapter. The Opioid Trust Fund Grants Committee's scoring recommendations shall be forwarded to the Opioid Abuse Prevention Committee for recommendation of award to recipients consistent with the scoring and evaluation done herein.
Sec. 84.302. - Composition of Opioid Trust Fund Grants Committee.

The Mayor shall appoint the members of the Opioid Trust Fund Grants Committee. The Opioid Trust Fund Grants Committee shall consist of five members to be appointed by the Mayor from within the following categories:

(1) A representative of the Medical Examiner's Office;
(2) A representative of the Duval County Health Department;
(3) A representative from Jacksonville Sheriff's Office or Jacksonville Fire and Rescue Department; and
(4) & (5) Two members of the Public Service Grants Council with experience or specializing in substance abuse issues.

PART 4. - OPIOID TRUST FUND GRANT PROCESS

Sec. 84.401. - Award by Rolling Appropriations.

The funds awarded under this Part shall be disbursed on a rolling basis as needed to effectuate the purpose of the Opioid Abuse Program Trust Fund and consistent with the annual budget. The Opioid Trust Fund Grants Committee shall set the time frames for submission of applications and deadlines for grant funding annually, or as needed. The Opioid Abuse Prevention Committee may determine pursuant to Section 84.203(b) above that funding resources are better utilized cumulatively by not funding opioid programs each fiscal year but in accumulating funds within the Opioid Abuse Program Trust Fund in Section 111.250 over more than a one year period. In this case, the Opioid Abuse Prevention Committee shall notify the Opioid Trust Fund Grants Committee their recommendations as to when the funding of the Opioid Abuse Program Trust Fund is at the appropriate level for distribution.

Sec. 84.402. - Grants Awarded.

The procedure for grants awarded to eligible recipients shall be contingent upon the value of the award. There shall be separate procedures set for (1) grants valued at $20,000 or less for a single award; (2) grants valued at more than $20,000 but less than $150,000 for a single award; and (3) grants of $150,000 or more for a single award.

Sec. 84.403. - Eligibility for grants of $20,000 or less for a single award.

Applicants seeking a grant in the amount of $20,000 or less are required to be (1) a non-profit organization registered with the Florida Department of State, Division of Corporations; and (2) have less than $100,000 in total annual revenues as an organization. The total grants awarded annually pursuant to this Section shall not exceed $200,000.00 unless a greater amount is appropriated by the Council.
Sec. 84.404. - Eligibility for grants more than $20,000 but less than $150,000 for a single award.

Applicants seeking a grant in an amount more than $20,000 but less than $150,000 for a single award are required to provide the following with their application:

(1) a copy of a good standing certificate issued within the last 12 months by the Florida Division of Corporations evidencing that the applicant is in good standing and has been in existence for three years prior to the application deadline;

(2) Either a copy of the applicant's current Charitable Solicitation Permit issued by the State of Florida evidencing that the applicant is current on state charitable permitting fees or a State letter of exemption indicating that the applicant is exempt under F.S. § 496.406(3);

(3) Provide the following financial information: (i) copies of applicant's completed and filed federal tax returns for the last three years; or (ii) an IRS certification of exemption and copies of audit reports for the last three years. Audit reports shall be conducted in accordance with both GAAS and Government Auditing Standards (GAS) issued by the Comptroller General of the United States, and if applicable the provisions of the Office of Management and Budget Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations" made by a certified public accountant; or (iii) if the applicant does not have the financial information requested in 3(i) or 3(ii), then the applicant must submit its financial information in form and substance reasonably acceptable to the Department of Finance and Administration. The form shall be identified by the Department of Finance and Administration prior to the commencement of the application cycle and be uniform for all agencies completing the form;

(4) An original affidavit, in the form provided by the Office of General Counsel, executed by the applicant's executive director, chief executive or operating officer, president, vice president or board chairman certifying that:

(i) The applicant's program will be operated in Duval County and serve the people of the City of Jacksonville;

(ii) The applicant's program will serve people with substance abuse issues, particularly addiction to opioid-related drugs;

(iii) The applicant is not receiving funding for its opioid-based program from any of the City programs listed in Section 118.805(a)(1)-(6), Ordinance Code;

(iv) The applicant's appropriation request for multiple or single programs does not exceed in aggregate 24 percent of the applicant's annual revenue (as shown on filed tax returns) averaged over the previous three tax years;

(v) The applicant is in compliance with the terms of all existing City agreements in which the applicant is a party; and
(vi) The applicant is in compliance with all applicable federal, state, local laws, rules, regulations and ordinances, as the same may exist and may be amended from time to time.

(vii) The contract approving such grant shall require Council approval through legislation, unless such grant has been previously authorized by Council as a lump-sum or other appropriation which would allow the Committee to award funds.

Sec. 84.405. - Eligibility for grants in an amount of $150,000 or more for a single award.

The same eligibility requirements in Section 84.404 above shall apply for grants in the amount of $150,000 or more for a single award except that the financial information required must consist of either: (i) copies of applicant's completed and filed federal tax returns for the last three years; or (ii) an IRS certification of exemption and copies of audit reports for the last three years. Audit reports shall be conducted in accordance with both GAAS and Government Auditing Standards (GAS) issued by the Comptroller General of the United States, and if applicable the provisions of the Office of Management and Budget Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations" made by a certified public accountant. The contract approving such grant shall require Council approval through legislation.

Sec. 84.406. - Application Requirements.

A subcommittee of three members of the Opioid Abuse Prevention Committee, selected by the Chair, shall create a standard application and process for each of the three types of awards provided above, which application and process shall be approved by a majority of the members of the Opioid Abuse Prevention Committee. These standard applications and processes may be occasionally modified or adjusted to meet changes in the Opioid Trust Fund Grants Committee's focus or goals, with the approval of a majority of the members of the Opioid Abuse Prevention Committee. Applications may be submitted in person or electronically as prescribed by the Grant Administrator.

Sec. 84.407. - Review, evaluation and scoring of applications by the Opioid Trust Fund Grants Committee.

Each of the members of the Opioid Trust Fund Grants Committee shall score every application made pursuant to this Part. Upon review, evaluation and scoring of each application, the completed score sheets shall be transmitted to the Chair of the Opioid Abuse Prevention Committee.

(a) Scoring and Rankings. A score sheet containing the evaluation criteria together with the maximum points assigned to each criterion pursuant to subsection (b) below shall be used to evaluate applications. Each member of the Opioid Trust Fund Grants Committee shall record scores given to each criterion on the score sheet. The score sheet shall be retained by the Opioid Trust Fund Grants Committee and made available for review as a public record at such time that the scoring for all eligible applications is completed. No staff shall score applications or provide scoring suggestions to the
Opioid Trust Fund Grants Committee. The Grants Administrator shall rank each application from highest to lowest (e.g., first, second, third, etc.) based on the average of the scores contained on the score sheets for each application. Upon determining the average score for each application, the Grants Administrator shall discard any individual score that is 20 points more or less than such average score and recalculate the average score for said application based on the remaining scores.

(b) Evaluation Criteria. The Opioid Trust Fund Grants Committee shall evaluate and score the applications based upon the following evaluation criteria and maximum assigned points to each criterion:

1. Quality of the program (maximum 20 points);
2. Strength of staff and board (maximum five points);
3. Applicant's ability to administratively manage the program and budget (maximum ten points);
4. Need for the program within the Jacksonville community (maximum 15 points);
5. Impact of the program (maximum 15 points) on the Jacksonville community;
6. Accuracy and appropriateness of the program budget (maximum 15 points);
7. Ability of the applicant to perform the program (maximum 15 points); and
8. Ability of the proposed measures to evaluate the effectiveness of the program (maximum five points).

(c) Results of Scoring. The Opioid Trust Fund Grants Committee shall establish a uniform procedure for breaking tied scores. Rankings shall be announced by the Chair and submitted to the Opioid Abuse Prevention Committee at its next noticed meeting. Copies of each applicant's completed score sheets, together with any other support information or justification from the application scorer regarding the application score, shall be made available to the applicants at such meeting. An applicant will also be notified in writing by the Opioid Trust Fund Grants Committee of its score and ranking. An applicant may appeal a score sheet or ranking decision made pursuant to this Part thorough the appeals procedure set forth in Section 84.501.

Sec. 84.408. - Final recommendations of opioid trust fund grants committee forwarded to opioid abuse prevention committee.

All final recommendations and evaluations recommending funding made by the Opioid Trust Fund Grants Committee shall be forwarded to the Chair of the Opioid Abuse Prevention Committee for distribution and recommendation of award funding consistent with the scoring of the applicants' applications.

Sec. 84.409. - Eligibility to apply for other grants.

Participation in the grant programs created herein shall not limit the applicant from applying for any other city-sponsored grant programs for non-opioid programs including but not limited
to: (i) Public Service Grant pursuant to Chapter 118, Part 6 or Part 8, (ii) Arts in Public Places Program pursuant to Chapter 126, Part 9, (iii) Kids Hope Alliance program pursuant to Chapter 77, (iv) Downtown Investment Authority and Office of Economic Development Programs pursuant to Chapter 55 and Chapter 26, (v) Housing and Community Development Division programs pursuant to Chapter 30, Part, 7, or (vi) Social Services Division programs pursuant to Chapter 28, Part 5. However, the applicant is not eligible to receive funding for its opioid-based program from any of the City programs listed above.

Sec. 84.410. - Applicability of Chapter 118 Provisions.

Unless otherwise provided in this Part 4, the provisions of Chapter 118, Parts 1 through 5 shall apply to grants awarded as provided herein. The annual reporting requirement pursuant to Section 118.201(f)(3) is modified herein for recipients receiving funding pursuant to this Chapter so that the annual report required shall be due as provided for in the written agreement corresponding with the annual term of the agreement. In addition, the appropriation of funds may be expended over a term greater than the City's Fiscal year contrary to Section 118.301(a)(5) provided that the legislation appropriating the grant funding, if applicable, and the written agreement concerning same provides for a term other than the City's Fiscal year.

PART 5. - APPEALS
Sec. 84.501. - Opioid Trust Fund Grants Appeals Board; Appeals Procedure.

(a) Appeals Board Responsibility; Composition. The Opioid Trust Fund Grants Committee Appeals Board (the "Grant Appeals Board") shall hear and make final determinations on all appeals made by applicants pursuant to this section, except for those provided under (f) below. The Grants Appeals Board shall consist of three members: (i) the Chair of Opioid Trust Fund Grants Committee, (ii) the Chair of the Opioid Abuse Prevention Committee, and (iii) the Grant Administrator, as that term is used in Chapter 118, Ordinance Code, or his or her designee. The Grant Administrator, or his or her designee, shall be the Chair of the Grant Appeals Board.

(b) Notice of Meetings; Standard of Review. All meetings of the Grant Appeals Board shall be quasi-judicial, noticed and open to the public. The standard of review for the Grants Appeals Board shall be de novo as to the specific matters contained in the applicant's Notice of Appeal.

(c) Appealable Matters. An applicant may only appeal a scoring, ranking or eligibility decision regarding the applicant's application to the Grants Board for one or more of the application or scoring defects stated below:

1. Mathematical errors contained on the application score sheet or ranking spreadsheet;

2. An error by the application scorer in deducting points from an applicant's application score for not including a required application item or attachment that was included in the applicant's application submittal and such error was determinative in the applicant's scoring;
(3) A minor irregularity in the application contents or requirements which (i) adversely impacts an applicant's eligibility or application score and ranking; and (ii) will not result in an unfair competitive advantage to the applicant if such irregularity is waived; and

(4) An error made by the staff in the eligibility determination or disqualification of an applicant's application from consideration pursuant to Sections 84.407, 84.408, and 84.409 respectively; and

(5) A determination made by the staff that an applicant's application is ineligible or disqualified due to such entity or agency being on the Council Auditor's Chapter 118, Ordinance Code noncompliance list.

(d) **Appeals Deadline; Contents; Procedures**. An applicant shall have five business days from the decision date of the Opioid Grant Review Committee or staff, as applicable, to deem an applicant ineligible to apply for a grant under this Part, disqualify an application under this Part or the notification of an award this Part to file a Notice of Appeal. The Notice of Appeal shall be addressed to the Opioid Grant Review Committee staff and must:

(i) Identify one or more of the stated reasons in subsection (c) above for the appeal and include any supporting documentation or information evidencing the same;

(ii) State the timeliness of the appeal; and

(iii) State the amount of the applicant's application grant request and the proposed award amount.

The Grant Appeals Board shall meet as soon as practicable to hear appeals and render final decisions to grant or deny the same. The Grant Appeals Board shall afford all applicants, and as applicable the Opioid Grant Review Committee Member(s) pertinent to the appeal, an opportunity to comment at the Notice of Appeal meeting, and the Grant Appeals Board shall notify the Opioid Grant Review Committee of the results and final determinations regarding each appeal.

(e) **Remedy**. Any appeals filed under subsections (4) and (5) above and granted in favor of the applicant by the Grant Appeals Board shall be immediately allowed into the grant review and evaluation process and the Chair shall assign such application to the Opioid Grant Review Committee for review, as applicable. In instances where the Opioid Grant Review Committee must make adjustments to tentative awards based on the appeal outcome, the Chair shall call a special meeting of the Opioid Grant Review Committee to make adjustments to the tentative awards and adopt final awards pursuant to this Part.

(f) **Procedures for Appeal of Awards less than $20,000**. Where an appeal is filed regarding a grant or award of less than $20,000, the applicant shall follow the deadlines and process set forth herein but rather than the Grant Appeals Board meeting and rendering a decision, the Grant Administrator shall review the evidence and appeal materials from the appellant and make a recommendation to the Grant Appeals Board. The Grant Appeals Board may follow the recommendation of the Grant Administrator and render a final decision thereon or it can meet pursuant to subsection (d) and then render a decision based thereon.
(g) Additional Procedures. The Grant Appeals Board may promulgate additional appeals procedures consistent with the procedures contained in this section.

(h) Grant Appeals Board Decisions to be Final. All decisions of the Grant Appeals Board, including that set forth in (f) above, shall be final and non-appealable.