



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 85-8

Drug Control Agents' Private Employment as Pharmacists

The Ethics Commission has been asked whether Consumer Protection Drug Control Agents, who are required to be licensed as pharmacists in Connecticut, may take private employment in Connecticut as pharmacists or consultants in the field of pharmacy.

Drug Control Agents are employed in the Drug Control Division, Department of Consumer Protection. The Division's responsibilities include enforcing the sections of chapters 382 (Pharmacy), 417 (General Provisions. Pure Food and Drugs), 418 (Uniform Food, Drug and Cosmetic Act), 419 (Retail Drug Control Act), 420b (Dependency-Producing Drugs), and 420c (Controlled Substance Registration), General Statutes which pertain to the adulteration or misbranding of all drugs, cosmetics, and devices, including their destruction or removal from commerce; to the embargoing of substandard drugs, cosmetics, and devices; to the monitoring of legal drug distribution systems at all levels of commerce and in the professional practice of all physicians, dentists, veterinarians, podiatrists, pharmacists, paramedical personnel, and hospitals and other health care institutions, public and private; to the inspection of controlled substance manufacturers and wholesalers, laboratories holding and using controlled substances, and pharmacies; and to the investigation of criminal cases involving the sale or possession of drugs. The Division investigates consumer complaints regarding drugs, cosmetics, and devices, and coordinates its efforts with all Federal, State, and local agencies which are concerned with these products.

The Division's inspections, investigations, monitoring, reviewing, and evaluating are carried out by its Drug Control Agents. The Agents also act as consultants and advisers to manufacturers, wholesalers, laboratory licensees, health care professionals, hospitals, convalescent and nursing homes, pharmacies, and governmental agencies regarding safeguards for drug, cosmetic, and device storage and handling and maintenance of standards established by the State. In connection with investigations, surveillances, raids, embargoes, and seizures conducted by law enforcement agencies of all levels of government they interview witnesses, suspects, and arrested

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persons, and prepare reports for, and testify as witnesses at, criminal trials and administrative hearings. They may serve search and seizure warrants and arrest warrants, and seize contraband controlled substances; they are authorized to make arrests without warrants for violation of chapter 420b, Part I, General Statutes. Subsection 21a-261(d), General Statutes. Following disasters such as fires and floods in which drugs, cosmetics, and devices are involved they identify and remove from commerce affected products which might be injurious to health. Agents investigate consumer complaints concerning drugs, cosmetics, and devices and take immediate action in response to recalls of such products by manufacturers and governmental agencies.

Consumer Protection Drug Control Agents have sweeping responsibility to monitor legal drug distribution systems to protect the health and safety of Connecticut citizens. They play a major law-enforcement role in an area in which criminal activity is widespread. It is difficult to see how they could carry out their State duties vigorously and responsibly if they were also involved in a private capacity in the drug distribution system which they are charged with overseeing. Even if the Agents were to favor their State responsibilities consistently over their private affairs, it is unlikely that the Department of Consumer Protection could maintain the confidence of Connecticut citizens that the Drug Control Division was operating with maximum effectiveness and objectivity in accomplishing its mission.

The Drug Control Agents offer two reasons for their being allowed to practice privately as pharmacists or consultants. First is that it would keep them up to date in the field of pharmacy, and therefore better regulators of it. This no doubt is true, but the same result can be achieved by in-service training programs. The second reason is that Agents sometimes face financial situations in which extra income would be helpful. This illustrates the basic conflict of interests which private employment in the field they regulate would create. If an Agent were to observe a violation, by his private employer, of the comprehensive laws administered by his Division, his duty would be to ensure the violation ceased, using criminal sanctions if necessary. This might well terminate his private employment, ending a supplement to his State salary which was, or had come to appear, critical to him. If he were laid off from one private position for carrying out his duties as a State employee, some employers might be eager to hire so incorruptible a person to correct any deficiencies in compliance with State standards existing in their firms. Many employers, however,

could be loath to introduce a "mole" into their business. An Agent would have to consider this before taking action against a private employer. He would have a substantial conflict of interests (subsection 1-84(a), section 1-85, General Statutes), being engaged in employment where the proper discharge of his duties could lead to his suffering a direct financial loss.

Drug Control Agents also cooperate, and act in coordination with, various law enforcement agencies. They may be privy to information -- the timing and target of a raid, for example -- which is confidential. If the target were his employer, the Agent's desire for continued employment might induce him to disclose the information he had gained as a State employee. Subsection 1-84(b), General Statutes. An Agent privately employed in the field which he helps regulate would be in a position to use his State position, and confidential information acquired in it, to keep the pay check from his private employer coming in, or even being increased, in violation of subsection 1-84(c), General Statutes.

Further, severe problems could be caused by Agents in private employment even for those Agents who have no outside employment. There are only a few Consumer Protection Drug Control Agents. Particularly in their geographic districts, they must have to work closely together. An Agent could be placed in an almost impossible position if he became aware of a significant violation by a fellow Agent's employer. His choice could be between either failing to do his duty in taking action which could deprive his fellow of income the latter considered essential or, at the least, destroying the harmony which must have to exist among Agents for efficiency and effectiveness.

Conflicts between one's State duties and one's private financial interests are almost inevitable when a State employee becomes involved in the industry regulated by his agency. See, for example, Ethics Commission Advisory Opinion No. 80-7, 41 Conn. L.J. No. 37, p. 21 (March 11, 1980). The conflicts are particularly acute when a State employee ventures to furnish, for private compensation, services which are the same as he is required to provide as a State employee -- in this case action as a consultant to a firm to which his job classification requires him to act as consultant and adviser. See, Ethics Commission Advisory Opinion No. 80-16, 42 Conn. L.J. No. 15, p. 6 (October 7, 1980).

In summary, if Drug Control Agents were to accept private employment as pharmacists or consultants in the field of pharmacy, the public could not have the confidence in the

integrity of the Drug Control Division operations which the Code of Ethics for Public Officials, Chapter 10, Part I, was created to foster in the operations of all State bodies and agencies. Multiple conflicts of interests, which the Code seeks to prevent, would occur. Consequently, Consumer Protection Drug Control Agents should not accept employment in the field in which they have a primary responsibility for regulation.


Julie Peck
Chairperson

Dated Oct. 11, 1985