

CONFLICT OF INTEREST AND WHISTLEBLOWING

PRESENTED BY:
David M. Lester Partner



A graphic featuring two large, overlapping arrows. The top arrow is teal and points to the right, containing the word 'CONFLICT' in white. The bottom arrow is red and points to the left, containing the word 'INTEREST' in white. The word 'OF' is positioned between the two arrows, slightly offset to the right. The background is a solid red color.

CONFLICT

OF

INTEREST

WHY DO WE CARE

- When public money funds an employer, it is essential that those working for the regional center focus exclusively on what will aid the person served and the regional center.
- No one associated with the regional center has any other interest that might create an incentive to favor a vendor or provider due to the relationship.
- Required by the Lanterman Act, WIC §§ 4626, 4626.5, and 4627.
- Implemented by Title 17 CCR Sections 54500 through 54535.

WHAT IS A CONFLICT OF INTEREST



WHAT IS A CONFLICT OF INTEREST

- Regional center employees cannot place themselves in a position where their private, personal interests may conflict with their official duties.
- Employees must be guided solely by the interests of the regional center and its persons served

TO WHOM IS COI REGULATIONS DIRECTED

- **Regional Center Employees with “Decision or Policy Making Authority**
 - People who make final decisions, compel decisions, make substantive recommendations, vote on obligations, or vote to approve selection of any director, trustee, agent employee contractor for his or her entity.
 - not solely secretarial or clerical
 - Service Coordinators
 - They participate on planning teams that make decisions, they make decisions about which programs and services to recommend to consumers and finally, that they are listed in WIC § 4626(e) as persons who must complete the conflict of interest reporting statements.
- Family members of decision makers
 - “spouse, domestic partner, parents, stepparents, grandparents, siblings, step-siblings, children, stepchildren, grandchildren, and in-laws.” Title 17, Section 54505(f)

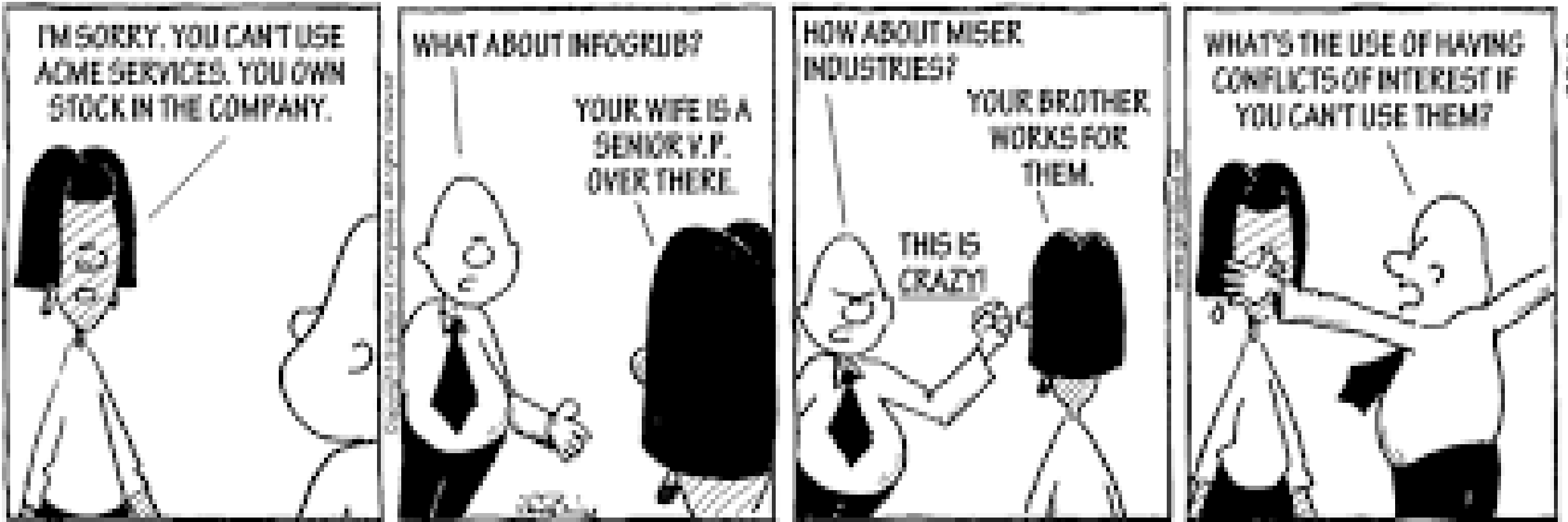


- Tempting to refer a family member to a job an employee knows to exist in the system
- Doing so may indeed threaten the position of the employee by creating a conflict

TO WHOM IS COI REGULATIONS DIRECTED

- **Governing Board Members**
 - Controlled by WIC §§4626(a), 4626(g), and Title 17, Section 54532
- **Executive Director**
 - Controlled by WIC §§4626(a), 4626(g), and Title 17, Section 54532
- **Advisory Committee Board Members**
 - Appointed pursuant to WIC §4622(i) controlled by Title 17, Section 54521
- **Contractors, Agents and Consultants**
 - §§ 54526, 54527, 54528, 54529, and 54530 identify what will constitute a conflict, § 54531 describes the obligation to complete a Conflict of Interest Reporting Statement., and § 54533 addresses resolution of such conflicts.

GRANTLAND®



TYPES OF CONFLICT OF INTERESTS

Conflicts of Interest Perceived or Actual

Company
Interests
and Duties

Outside Business Interests
Family and Friends
External Boards
Communications
Gifts and Entertainment

Personal
Interests
or Loyalties

Conflict by Holding a Position with a Provider

- Under Title 17, § 54526, a conflict exists when a person with decision making authority, or family member of such person, is any of the following for a provider:
- (1) a governing board member, (2) a board committee member, (3) a director, (4) an officer, (5) an owner, (6) a partner, (7) a shareholder, (8) a trustee, (9) an employee, (10) an agent, (11) a contractor, (12) a consultant, (13) holds any position of management, or (14) has decision or policy making authority for a business entity, entity, or provider.

CONFLICT ARISING FROM FINANCIAL INTEREST IN PROVIDERS

- If an employee attempts to make or influence a decision in which the employee or a family member has a financial interest
 - Any employee not just limited to decision makers
 - A Financial Interest is defined to include an ownership interest of \$2,000 or more, sources of income or future interests for income of \$500 or more within the prior 12 months. See Section 54527.

CONFLICT MAKING CONTRACT IN WHICH FINANCIALLY INTERESTED

- Under § 54528, employees shall not be guided by personal interests and shall not be financially interested in any contract they make in their official capacity.
- RC employees shall not make any contract which financially benefits a family member, unless benefits associated with the contract are available to RC persons served or their families generally.
- In interpreting and applying this section, the common law doctrine against Conflict of Interest and the authorities interpreting the doctrine shall govern.

CONFLICTS WORKING WITH FAMILY MEMBERS

- Under § 54530(a), A Conflict of Interest exists where a regional center employee participates in the evaluation of an application for employment or bid for position or contract at the RC, submitted by a family member.
- Under Section 54530(b) a potential Conflict of Interest exists when a regional center employee supervises his or her family member.
- Note: The DDS Conflict of Interest Reporting Statement, in question 10, asks about evaluating family applications, but, in an apparent oversight, it fails to ask about supervising a family member. Employees should report on the statement when supervision of a family member exists.

SECTION 54529 – GENERAL PROHIBITION AGAINST CONFLICTS

- **General Integrity** - Under 54529(a), employees must discharge their responsibilities with integrity and fidelity, and must not place themselves in a position where their private, personal interests conflict with their official duties.
- **Perform with Diligence** - Under 54529(b), an employee must exercise powers conferred on the employee with disinterested skill, zeal and diligence for the benefit of RC persons served.
- **Conflicts Not Addressed by Regulations** - In 54529(c), this subsection contains a novel approach when an employee becomes aware of a present or personal conflict of interest regarding a particular transaction that the regulations do not address. In that situation, the employee must not participate in any discussion and must refrain from making any recommendation or decision regarding the present or potential conflict of interest that has not been specifically addressed in the regulations.

IDENTIFYING CONFLICTS OF INTERESTS



IDENTIFYING CONFLICT OF INTERESTS

- Conflict of Interest Reporting Statement (Form DS 6016)
- Which Persons Should Submit Conflict Statements
 - WIC § 4626(e) requires Board members and decision-making employees
 - WIC § 54531(b) requires contractors, agents and consultants,
 - Since some of conflicts do not depend on having decision-making” authority, most regional centers require all employees to complete the Conflict of Interest Reporting Statement.

SUBMISSION OF COI FORMS

- **Annually:** Regional Center employees shall complete and file an annual Conflict of Interest Statement by August 1 of each year. 54531(b).
- **New employees:** New employees shall file a COI statement within 30 days of assuming the position. 54531(c).
- **Change in Status:** Regional Center employees shall complete and file a COI statement with the Regional Center within 30 days of any change in status that creates a COI. 54531(d).
- **Executive Director Review:** The executive director shall review the COI reporting statement of each employee and within ten working days of receipt of the statement, shall determine whether a COI exists. 54531(e). 4626 (k).
- **Obligations When COI Discovered:** Regional Centers who learn of an employee with a present or potential conflict of interest must either (1) require the employee eliminate the conflict, or (2) mitigate and manage the conflict through a conflict resolution plan, or the individual shall resign. 54533(a).
- **For Waiver, Regional Center Must submit COI Resolution Plan to DDS:** within 30 calendar days of receipt of the COI statement. 54533(a) and (b)



WILL I TAKE A MESSAGE?
I DON'T KNOW - WHAT'S
IN IT FOR ME?



OBLIGATIONS TO RESPOND TO COI

- **Executive Director Reviews Conflict Statements**

- Under § 54531(e), the Executive Director is required to review the completed Conflict of Interest Reporting statement of each employee within ten (10) working days of receipt and determine whether a present or potential conflict exists.
- Under § 54533(c), when DDS independently identifies an employee conflict, DDS shall notify the regional center of an employee's present or potential Conflict of Interest.

- **Regional Center Must Eliminate Conflict or File Conflict Resolution Plan**

- Under Section 54533(a) employee with a present or potential COI must eliminate the conflict, manage and mitigate the conflict through a Conflict Resolution Plan, or resign.

- **Submission of Conflict Resolution Plan**

- Must be submitted within 30 days of awareness of conflict

OBLIGATIONS TO RESPOND TO COI

- **Content of Conflict Resolution Plan**

- It must describe the precise nature of the conflict, including the type of conflict, the relationship between the individuals involved (when a family member is involved), and the roles and identity of each person.. Section 54533(g)(1)
- Under Section 54533(g)(2) the Plan must then identify the actions the regional center will take to eliminate or mitigate and manage the conflict. This can involve either, resignation of the family member creating the conflict, refraining from participation in a certain category of matters that create the conflict, a change of position, duties, or assignment, or a divestiture of financial interests.
- the Plan must “provide a detailed explanation of how each of the proposed actions will eliminate, mitigate or manage the conflict. Section 54533(g)(3).
- The Plan must provide the name, position, and duties of the individuals who will be responsible for monitoring the Plan, Section 54533(g)(4), and the Plan must be signed by the individuals subject to the Plan under Section 54533(g)(4).

OBLIGATIONS TO RESPOND TO COI

- **Postings On Website Of The Conflict And Of Policy**

- Under § 54533(f), RCOC shall post on the internet each COI reporting statement that identifies a present/potential COI that cannot be resolved within 30 calendar days.
- Posting continues until the conflict has either been eliminated or the individual has resigned.
- Additionally the COI policy must be posted on web site . WIC § 4626.5.

- **Use of Discretion in Seeking Waivers by Conflict Resolution Plan**

- Regional Center has complete discretion to demand elimination of conflict or to seek waiver by means of a Conflict Resolution Plan
 - Such plans are difficult to administer and impact duties of more than one person
 - The more plans that are filed the less likely the newer ones will be approved

ROLE OF DDS IN MONITORING CONFLICTS



ROLE OF DDS IN MONITORING CONFLICTS

- **Review of Conflict Resolution Plan by Department**

- Under Section 54534(f), DDS shall issue a modification, approval or denial of the proposed Conflict Resolution Plan in writing to the RC governing board or RC designated party within 30 calendar days of receipt of an employee's proposed Conflict Resolution Plan.
- Section 54534(g) provides that if DDS denies an employee's Conflict Resolution Plan, the individual shall have 30 calendar days to eliminate the conflict or to resign.
- The employee shall fully comply with all the elements set forth in the approved Conflict Resolution Plan. Section 54534(j).
- under Section 54534(k), a new Conflict Resolution Plan shall be submitted to DDS on an annual basis, and upon any change of status that creates a present/potential conflict of Interest.
- Section 54534(d) makes very clear that the submission of Conflict Resolution Plan does not authorize the employee to engage in the activities that created the conflict.

ROLE OF DDS IN MONITORING CONFLICTS

- **Sanctions**

- Under Section 54535(a), If the Department finds a violation of these provisions, it can provide 30 days to eliminate or resolve the violation.
- Under subsection (b), if the violation is not so resolved or eliminated, DDS may “take immediate action to commence procedures for termination or nonrenewal of the regional center contract pursuant to W&I Code, Section 4635.”

WHISTLEBLOWER



TYPES OF COMPLAINTS

- Consumer Rights Complaints
- Early Start Complaints
- Due Process Requests
- Mediation Conference Requests
- Lanterman Act Fair Hearing Requests
- Title 17 Complaints
- Citizen Complaints and Comments
- Vendor Appeals
- Whistleblower Complaints

TYPES OF WHISTLEBLOWER COMPLAINTS

- **Improper Regional Center Activity**

- Activity by RC or an employee, officer, or board member in the conduct of RC business that is a violation of state or federal law or regulations, violation of contract provisions, fraud or fiscal malfeasance, misuse of government property, or constitutes gross misconduct, incompetency, or inefficiency.

- **Improper Vendor/Contractor Activity**

- Activity by a vendor/contractor, employee, officer, or board member of a vendor/contractor in the provision of DDS funded services that is a violation of state or federal law or regulation, violation of contract provisions, fraud or fiscal malfeasance, misuse of government property, or constitutes gross misconduct, incompetency, or inefficiency.

TO WHOM CAN YOU COMPLAIN

- RCOC's Senior Management
 - Executive Director, Director of Services and Support, Chief Financial Officer, Clinical Director, General Counsel, HR Director, IT Director
- RCOC's Board of Directors' Executive Committee
 - Board Chair, Vice-Chair, Secretary, Treasurer, or Counsel to the Board
 - Method is via phone, email, or attendance at Board meeting
- DDS Community Operations Division or the Community Services and Supports Division

A hand holding a key over a dark background with the text "REPORT IMPROPER ACTIVITY".

REPORT IMPROPER ACTIVITY

COMPLAINT PROCESS

- Clear and concise statement of improper activity
 - Should be factual and not speculative
 - If name is not provided for bad actor, investigating party may not have sufficient information to investigate
 - Evidence should consist of original documents and not copies
- Anonymous complaints are permissible
 - If insufficient information is provided, a thorough investigation may not be possible

INVESTIGATION PROCESS

- Recipient of complaint shall obtain sufficient information to refer the complaint to the appropriate person for review and resolution.
 - Verbal complaints must be documented
- All complaints will be promptly investigated and appropriate corrective action will be taken.
- The recipient of the complaint will notify the person who made the complaint of its conclusions and any action taken if complaint is not anonymous.
 - The information will be provided as long as it does not breach confidentiality

CONFIDENTIALITY

- Investigating party will make best efforts to maintain confidentiality
 - Sometimes cannot because of statutory responsibilities like ensuring the health and safety of persons served or contract compliance
 - Inform complainant of need to disclose prior to actual disclosure of information
 - Identify to appropriate law enforcement agencies conducting criminal investigations
 - All mandatory abuse reporting requirements remain in effect as an exception to confidentiality

NO RETALIATION

- Purpose of policy is to encourage and enable persons to raise serious concerns in good faith
 - Good faith means reasonable grounds to believing the information disclosed supports a finding of inappropriate behavior
 - Unsubstantiated allegations which are made maliciously or to be knowingly false can be subjected to discipline
- No reporter shall suffer harassment, retaliation, or adverse consequence as a result of filing a complaint
 - Any RCOC employee who engages in such behaviors will be subject to discipline up to and including termination

NOTIFICATION

- Whistleblower policy posted on website
- Notification of policy and complaint process will be provided annually to employees, board members, persons served, their families, and the vendor community
 - Can remind employees when they sign their annual performance review
 - Board members can receive copies of the Policy in board packets
 - Individuals served and their families can receive notification of how they can access the policies in their annual Services Cost Statement
 - Vendors can receive their annual notification in the payment process of how they can access the policies

GUIDING PRINCIPLES



GUIDING PRINCIPLES

- Public funds are expended in a cost-effective, consumer-directed, consistent with good business practices and careful stewardship
- Board is representative and accountable to its stakeholders
- Board members will be actively involved in the organization and provide support to maximize effective participation of all members
- RCOC aspires to highest standard of ethical conduct
 - Do what we say
 - Reporting information with accuracy and transparency
 - Maintaining full compliance with the laws, rules, and regulations governing RCOC

Question & Answer Session

Thank You

For questions or comments, please contact:

{ David M. Lester
(562) 653-3200
David.lester@aalrr.com } }

aalrr

Atkinson, Andelson
Loya, Ruud & Romo
A Professional Law Corporation

Disclaimer

This AALRR presentation is intended for informational purposes only and should not be relied upon in reaching a conclusion in a particular area of law. Applicability of the legal principles discussed may differ substantially in individual situations. Receipt of this or any other AALRR presentation/publication does not create an attorney-client relationship. The Firm is not responsible for inadvertent errors that may occur in the publishing process.

©2020 Atkinson, Andelson, Loya, Ruud & Romo

