



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for
an Opinion by REBECCA ALVARADO,
Employee, Division of Insurance,
Department of Business & Industry,**

Opinion No. 08-72A

Public Employee.

OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a hearing on November 13, 2008. Rebecca Alvarado (Alvarado), an employee with the Division of Insurance in the Department of Business & Industry (Division) appeared in person and provided sworn testimony.

Pursuant to NRS 281.236, Alvarado requests the Commission determine whether she is subject to the 1 year cooling-off period for employment. If so, she asks the Commission grant her relief from the strict application of said period.

After fully considering Alvarado's request and analyzing the facts and circumstances and testimony presented, the Commission deliberated and orally advised Alvarado of its decision in the matter. The

Commission now renders this written Opinion.

FINDINGS OF FACT

1. Alvarado has been employed for over three years with the Division as an Actuary 1/Associate Actuary. Her principal duties include:

a. Reviewing form filings (policies, forms and rates) from health insurers, life insurers and HMOs;

b. Analyzing legislation, draft regulations and represent the Division at hearings, workshops, boards and health committees;

c. Responding to consumers, industry representatives, public officials, the general public and other interested parties regarding

¹ The following Commissioners participated in this opinion: Chairman Hutchison and Commissioners Beyer, Cashman, Keele, Lamboley, Moran and Shaw.

complex complaints, letters surveys and assignments.

2. Independence Blue Cross (Independence) is a regional health insurance company that does not operate in Nevada.

3. Independence is not affiliated with Anthem Blue Cross Blue Shield, the Blue Cross Blue Shield carrier for Nevada.

4. Alvarado applied for employment and received an offer of employment from Independence.

5. The position offered to Alvarado is for an Actuarial Specialist, located in Philadelphia, Pennsylvania. This position is responsible for assisting in the statistical analysis done for financial reports. Her duties at Independence will be unrelated to her duties at the Division.

CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Alvarado was a public employee, as defined by NRS 281A.150.

2. The Commission has jurisdiction to render an opinion in this matter, pursuant to NRS 281.236.5.

3. Alvarado is subject to the 1 year cooling-off period, pursuant to NRS 281.236.3.

4. Alvarado is granted relief from the strict application of the 1 year cooling off period, pursuant to NRS 281.236.5.

DISCUSSION

All the facts in this matter were provided by Alvarado. Facts and

circumstances that differ from those used by the Commission in this opinion may result in a different opinion.

The Commission must first determine whether Alvarado is an employee subject to the 1 year cooling-off period, pursuant to subsection 3 of NRS 281.236.

If the Commission concludes that Alvarado is subject to the cooling-off period for employment, the Commission must then determine whether relief from the strict application of that cooling-off period is proper, pursuant to subsection 5 of NRS 281.236.

NRS 281.236.3 states:

In addition to the prohibitions set forth in subsections 1 and 2, a business or industry whose activities are governed by regulations adopted by a department, division or other agency of the Executive Branch of State Government shall not, except as otherwise provided in subsection 5, employ a former public officer or employee of the agency, except a clerical employee, for 1 year after the termination of his service or period of employment if:

(a) His principal duties included the formulation of policy contained in the regulations governing the business or industry;

(b) During the immediately preceding year, he directly performed activities, or controlled or influenced an audit, decision, investigation or other action, which significantly affected the business or industry which might, but for this section, employ him; or

(c) As a result of his governmental service or employment, he possesses knowledge of the trade secrets of a direct business competitor.

The Commission finds that Alvarado is subject to the 1 year cooling-off period. She testified that her principal duties at the Division include those listed in NRS 281.236.3(a)-(c).

The Commission now determines whether granting her relief from the strict application of the cooling-off period is proper.

NRS 281.236.5 states:

A public officer or employee may request that the Commission on Ethics apply the relevant facts in his case to the provisions of subsection 3 or 4, as applicable, and determine whether relief from the strict application of those provisions is proper. If the Commission on Ethics determines that relief from the strict application of the provisions of subsection 3 or 4, as applicable, is not contrary to:

(a) The best interests of the public;

(b) The continued integrity of State Government; and

(c) The code of ethical standards prescribed in NRS 281A.400,

↳ it may issue an opinion to that effect and grant such relief. The opinion of the Commission on Ethics

in such a case is subject to judicial review.

As a general rule, the Commission is reluctant to grant relief from the cooling-off period unless exceptional circumstances exist.

In a prior opinion, the Commission recognized that “[o]ne goal of the Nevada Legislature in enacting subsection 3 of NRS 281.236 was to significantly reduce the temptation for a public officer or employee to compromise public duties in favor of possible employment opportunities within the business or industry which the public officer or employee regulated. Public suspicions arise about the integrity of government and the ethical standards of public officers and employees, if a regulator is permitted to accept such employment immediately after concluding one’s public service.” *In Re Judy Sheldrew*, Comm’n on Ethics Opinion No. 00-44 (2000).

In Alvarado’s case, her acceptance of Independence’s offer of employment is not contrary to the best interests of the public. Additionally, it is not contrary to the continued integrity of state government or contrary to the code of ethical standards.

Alvarado is relocating to Pennsylvania for the job with Independence. Alvarado’s job duties at Independence will be unrelated to her work at the Division. Further, any knowledge of trade secrets she acquired through the Division would apply to direct business competitors of Independence, if it was actively doing business in Nevada. Independence is not actively doing business in Nevada. Therefore, relief from the strict application of the cooling-off period is proper in this instance.

As a final note, Alvarado took it upon herself to seek an advisory opinion which action the Commission appreciates in efforts to ensure the integrity of public service.

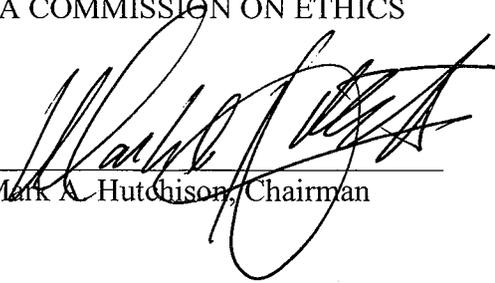
CONCLUSION

By a unanimous vote, by a preponderance of the evidence, the Commission concludes that Alvarado is subject to the 1 year cooling-off period, pursuant to NRS 281.236.3. Further, the Commission grants Alvarado relief from the strict application of said cooling-off period because in this case, relief is not contrary to the best interests of the public, the continued integrity of State Government, and the code of ethical standards, prescribed in NRS 281A.400.

DATED: 23 DECEMBER 2008

NEVADA COMMISSION ON ETHICS

By: _____


Mark A. Hutchison, Chairman