

1 GARY S. WINUK
Chief of Enforcement
2 ZACHARY W. NORTON
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 10/590
13)
14 WILLIAM TAYLOR,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
17)

18 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
19 and Respondent William Taylor agree that this stipulation will be submitted for consideration by the
20 Fair Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waive, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the
27 right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent William Taylor violated the Political Reform
4 Act by failing to disclose certain economic interests in Form 700Us filed in conjunction with research
5 projects at the University of California, San Diego, in violation of Government Code Section 87300 (4
6 counts). All counts are described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by
7 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this
8 matter.

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
10 Respondents also agree to the Commission imposing upon him an administrative penalty in the amount
11 of Twelve Thousand Dollars (\$12,000). A cashier's check from Respondent in said amount, made
12 payable to the "General Fund of the State of California," is submitted with this Stipulation as full
13 payment of the administrative penalty, to be held by the State of California until the Commission issues
14 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
15 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
16 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
17 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
18 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
19 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
20 shall be disqualified because of prior consideration of this Stipulation.

21
22
23 Dated: _____
24 Roman G. Porter, Executive Director
25 Fair Political Practices Commission

26
27 Dated: _____
28 William Taylor, Respondent

1 **DECISION AND ORDER**

2
3 The foregoing Stipulation of the parties “In the Matter of William Taylor,” FPPC No. 10/590,
4 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
5 Practices Commission, effective upon execution below by the Chairman.

6
7 IT IS SO ORDERED.

8
9 Dated: _____

Dan Schnur, Chairman
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent William Taylor is a medical doctor who was employed as a Clinical Professor of Surgery, Division of Neurosurgery and a Principal Investigator with the University of California, San Diego (hereafter “UCSD”) at all times relevant to this complaint. Principal Investigators are specifically covered under the University of California’s Conflict of Interest Code, and are required to file a special statement of economic interests, FPPC Form 700U (hereafter “Form 700U”).¹ The Form 700U, filed in conjunction with the Principal Investigator’s application for approval of non-governmental funding for research projects, requires disclosure of the Principal Investigator’s economic interests, if any, in the non-governmental funding source.

In this matter, Respondent Taylor submitted application statements, as a Principal Investigator, for four medical research projects that would be funded by non-governmental entities. On the Form 700U filed with each of these applications, Respondent Taylor declared that he did not have an economic interest in the non-governmental funding source. However, in each instance, the non-governmental funding source was either an investment interest of Respondent Taylor, or it was a source of income to him during the 12 months preceding the application date.

For the purposes of this Stipulation, Respondent’s violations of the Political Reform Act are stated as follows:

COUNT 1: On or about July 25, 2008, Respondent William Taylor failed to properly disclose NuVasive, Inc. as an economic interest on the Form 700U he filed in conjunction with an application for a research project for which an undisclosed amount in funding was to be provided by NuVasive, Inc., in violation of Section 87300 of the Government Code.

COUNT 2: On or about March 13, 2009, Respondent William Taylor failed to properly disclose NuVasive, Inc. as an economic interest on the Form 700U he filed in conjunction with an application for a research project for which an undisclosed amount in funding was to be provided by NuVasive, Inc., in violation of Section 87300 of the Government Code.

COUNT 3: On or about June 1, 2009, Respondent William Taylor failed to properly disclose NuVasive, Inc. as an economic interest on the Form 700U he filed in conjunction with an application for a research project for which an undisclosed amount in funding was to be provided by NuVasive, Inc., in violation of Section 87300 of the Government Code.

¹ A “Principal Investigator” is a faculty member who additionally conducts research for non-University entities, both governmental and private, under grants or other funding mechanisms that are subject to the control and approval of the University. All Principal Investigators are faculty members; however, not all faculty members are Principal Investigators.

COUNT 4: On or about September 29, 2009, Respondent William Taylor failed to properly disclose NuVasive, Inc. as an economic interest on the Form 700U he filed in conjunction with an application for a research project for which \$16,821 in funding was to be provided by NuVasive, Inc., in violation of Section 87300 of the Government Code.

SUMMARY OF THE LAW

A finding on which the Political Reform Act (the “Act”)² is based is that public officials should perform their duties in an impartial manner, free from bias caused by their own financial interests or the interests of persons who have supported them. (Section 81001, subdivision (b).) Accordingly, one of the stated purposes of the Act is that the assets and income of public officials, which may be materially affected by their official actions, must be disclosed, and in appropriate circumstances, that public officials disqualify themselves from acting, so that conflicts of interest may be avoided. (Section 81002, subd. (c).)

A. Disclosure of Economic Interests

In furtherance of the purpose of disclosure, the Act requires every agency to adopt and promulgate a Conflict of Interest Code. Section 87302 specifies that an agency’s Conflict of Interest Code must designate the employees who are required to disclose reportable investments, business positions, interests in real property, sources of income and gifts on a statement of economic interests.

The Act defines “income” to include “a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse.” (Section 82030.) In addition, instructions on the cover page of the Form 700-U have consistently included language outlining specific disclosure requirements consistent with this definition.

Regulation 18755 outlines requirements for the disclosure of financial interests and disqualification with respect to certain academic decisions. In Regulation 18755, the Commission mandated a specific procedure for universities to establish, through their respective conflict of interest codes, for persons receiving grants or other funding from outside sources to conduct research.

² The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Section 18109, *et seq.* All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

“Disclosure shall be required under Government Code Section 87302 or any Conflict of Interest Code in connection with a decision made by a person or persons at an institution of higher education with principal responsibility for a research project to undertake such research, if it is to be funded or supported, in whole or in part, by (1) A contract or grant from a non-governmental entity or sponsor, or (2) Other funds earmarked by the donor for a specific research project or for a specific researcher. (Regulation 18755, subdivision (a).)

The agency’s Conflict of Interest Code, including any procedures or policies it establishes in compliance with Regulation 18755, has the force and effect of law, and any violation of the code, or its policies or procedures, would be a violation of the Act. (Section 87300.)

SUMMARY OF THE FACTS

During his employment with UCSD, Respondent Taylor prepared and submitted application statements to the UCSD Independent Review Committee, as a Principal Investigator, for approval to receive funding from non-governmental entities for medical research he conducted at UCSD. In conjunction with each of these applications, Respondent Taylor filed a Form 700U, under penalty of perjury, declaring any specific financial interests in the non-governmental funding sources.

In compliance with Regulation 18755, the University of California established a policy, as part of its conflict of interest code, regarding disclosure and disqualification related to academic decisions. The “University Policy on Disclosure of Financial Interests in Private Sponsors of Research” provides in part:

“A principal investigator must disclose whether or not he or she has a direct or indirect financial interest in the sponsor of research which is funded in whole or in part, (a) through a contract or grant with a non-governmental entity or (b) by a gift from a non-governmental entity which is earmarked by the donor for a specific research project or specific principal investigator.

Disclosure statements (Form 700U) must be filed (a) before final acceptance of such contract, grant, or gift; (b) when funding is renewed; and (c) within 90 days after expiration in the case of a contract or grant, or after funds have been completely expended in the case of a gift. The Statements will be open to public inspection. When disclosure indicates that a financial interest exists, an independent substantive review of the disclosure statement and the research project must take place prior to acceptance of the contract, grant or gift.”

UCSD established the Independent Review Committee (hereafter “IRC”) to provide an

independent substantive review of the Form 700U filed by a Principal Investigator, whenever there is a positive financial disclosure in the non-governmental funding source for the Principal Investigator's research. IRC has established management strategies to eliminate, manage, or reduce conflicts of interest. The IRC considers a number of factors to determine the seriousness of the potential conflict, and whether and how the conflict can be managed. The committee can recommend approval of the disclosure, which means a non-governmental funding source can be accepted. The IRC can also recommend a reduction or elimination of the financial interest, when one or more potential risks exist. Further, the IRC can recommend that certain actions be taken to manage the conflict of interest, including monitoring of the project by the Conflict of Interest Management Subcommittee, requiring disclosure of the economic interest in any publications and presentations resulting from the study, divestiture of the financial interest(s), and suspension of consulting and any other recompensed activities with a company during the course of a research project that involves clinical testing of a company's drug, device, vaccine or procedure.

If a Principal Investigator fails to disclose financial interests in a non-governmental entity on the Form 700U in connection with the research project application, the above review by the IRC will be circumvented.

Respondent first entered into a written agreement with NuVasive in 2003 or 2004. Since that time, Respondent has been compensated by NuVasive for teaching courses on its behalf, and providing his services as a consultant regarding product development. In addition, NuVasive paid for Respondent's travel and related costs in connection with this work. In four separate instances, Respondent Taylor failed to disclose his economic interests on the Form 700U he filed in conjunction with the applications for non-governmental funding of his research projects.

Count 1: NuVasive, Inc

On or about July 25, 2008, Respondent Taylor signed a Form 700U, which was submitted to UCSD's Independent Review Committee for approval to receive undisclosed amount of funding from NuVasive, Inc., a non-governmental entity. The funding was for a research project in which Respondent was listed as the Principal Investigator. The research project was entitled "Evaluation of NeuroVision Dialator Detection Thresholds."

Respondent Taylor prepared and signed a Form 700U on or about July 25, 2008, declaring that he did not have any interest in NuVasive, Inc. He also indicated that NuVasive had not paid any travel expenses. At all times herein, NuVasive, Inc. employed Respondent as a consultant, and was a source of income to Respondent Taylor, clearly in excess of the minimum \$500.

Respondent Taylor violated Section 87300 by failing to disclose NuVasive, Inc. as a source of income, as well as his consulting relationship with NuVasive, Inc., and related travel payments, on the Form 700U he signed under penalty of perjury on or about July 25, 2008.

Count 2: NuVasive, Inc

On or about March 13, 2009, Respondent Taylor signed a Form 700U, which was submitted to UCSD's Independent Review Committee for approval to receive undisclosed amount of funding from NuVasive, Inc., a non-governmental entity. The funding was for a research project in which Respondent was listed as the Principal Investigator. The research project was entitled "The Clinical Utility of NeuroVision Guidance in the Placement of Percutaneous Pedicle Screws: A Perspective Evaluation."

Respondent Taylor prepared and signed a Form 700U on or about March 13, 2009, declaring that he did not have any interest in NuVasive, Inc. He also indicated that NuVasive had not paid any travel expenses. At all times herein, NuVasive, Inc. employed Respondent as a consultant, and was a source of income to Respondent Taylor, clearly in excess of the minimum \$500.

Respondent Taylor violated Section 87300 by failing to disclose NuVasive, Inc. as a source of income, as well as his consulting relationship with NuVasive, Inc., and related travel payments, on the Form 700U he signed under penalty of perjury on or about March 13, 2009.

Count 3: NuVasive, Inc

On or about June 1, 2009, Respondent Taylor signed a Form 700U, which was submitted to UCSD's Independent Review Committee for approval to receive undisclosed amount of funding from NuVasive, Inc., a non-governmental entity. The funding was for a research project in which Respondent was listed as the Principal Investigator. The research project was entitled "A Pivotal, Multi-Center, Clinical Trial Evaluating the Safety and Effectiveness of the Lumbar TDR Device in Subjects with Single-Level Lumbar Degenerative Disc Disease."

Respondent Taylor prepared and signed a Form 700U on or about June 1, 2009, declaring that he did not have any interest in NuVasive, Inc. He also indicated that NuVasive had not paid any travel expenses. At all times herein, NuVasive, Inc. employed Respondent as a consultant, and was a source of income to Respondent Taylor, clearly in excess of the minimum \$500.

Respondent Taylor violated Section 87300 by failing to disclose NuVasive, Inc. as a source of income, as well as his consulting relationship with NuVasive, Inc., and related travel payments, on the Form 700U he signed under penalty of perjury on or about June 1, 2009.

Count 4: NuVasive, Inc

On or about September 29, 2009, Respondent Taylor signed a Form 700U, which was submitted to UCSD's Independent Review Committee for approval to receive \$16,821 in funding from NuVasive, Inc., a non-governmental entity. The funding was for a research project in which Respondent was listed as the Principal Investigator. The research project was entitled "Retrospective Chart Review of Clinical and Radiographic Outcomes in XLIF Patients with Minimum 2-Year Follow-up."

Respondent Taylor prepared and signed a Form 700U on or about September 29, 2009, declaring that he did not have any interest in NuVasive, Inc. He also indicated that NuVasive had not paid any travel expenses. At all times herein, NuVasive, Inc. employed Respondent as a consultant, and was a source of income to Respondent Taylor, clearly in excess of the minimum \$500.

Respondent Taylor violated Section 87300 by failing to disclose NuVasive, Inc. as a source of income, as well as his consulting relationship with NuVasive, Inc., and related travel payments, on the Form 700U he signed under penalty of perjury on or about September 29, 2009.

CONCLUSION

This matter consists of four counts of violating sections 87300 of the Act, which carries a maximum administrative penalty of Twenty Thousand Dollars (\$20,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Failures to file statements of economic interests which are not included in the SEI Streamlined Program have historically received substantial penalties ranging up to the maximum penalty of \$5,000 per count.

AGGRAVATING FACTORS

The non-governmental funding sources benefited by being able to utilize research conducted under the auspices of the University of California in the development and promotion of their own medical research projects and products.

Objectivity of researchers is an essential value in scientific research and the basis for public trust. Researchers should be led by their data, not by other interests that might undermine the scientific integrity of their work. Concerns are raised when financial considerations may compromise or have the appearance of compromising an investigator's professional judgment and independence in the design, conduct, or publication of research.

Respondent's failure to properly disclose his economic interests to the Independent Review Committee was significant, and had the effect of avoiding any conflict of interest scrutiny by the IRC, UCSD's independent substantive review committee.

MITIGATING FACTORS

Respondent contends that he did not intend to keep information from the public or the University of California, and did not deliberately omit his income from NuVasive on the Forms 700U. Dr. Taylor also took corrective action after recognizing his reporting omission. Dr. Taylor discontinued the project identified in Count 3 before the project received any funding from NuVasive or enrolled any patients. Dr. Taylor also discontinued his participation in the projects identified in Counts 2 and 4, and turned over all responsibility for those projects to a new Principal Investigator.

This matter solely concerned violations of the Political Reform Act, and did not otherwise concern the scientific integrity of Dr. Taylor's work or his care for his patients. Respondent contends the funded projects at issue in this matter only involved collecting data regarding certain standard medical procedures and patient outcomes.

Respondent has no prior history of violating the Political Reform Act and fully cooperated with the Enforcement Division's investigation into this matter.

PENALTY

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Twelve Thousand Dollars (\$12,000).