



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

July 14, 2023

Dushyant Pathak, Ph.D., MBA  
Associate Vice Chancellor  
461 Roosevelt Way  
San Francisco, CA 94114

Re: Your Request for Advice  
**Our File No. A-23-078**

Dear Mr. Pathak:

This letter responds to your request for advice regarding the revolving door provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

As a former Associate Vice Chancellor (“AVC”) of Research at the University of California, Davis (“UC Davis”), does the permanent ban prohibit you from advising Sierra BioPharma, Inc. (the “Company”), concerning the renewal of a letter of intent (“LOI”) executed between the Company and UC Davis during your employment at UC Davis?

### CONCLUSION

Yes. Because you directly supervised the staff responsible for negotiating, executing, or renewing the LOI, the permanent ban prohibits you from advising the Company concerning the LOI.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## FACTS AS PRESENTED BY REQUESTER

From 2012 until August of 2019, you served as Associate Vice Chancellor (AVC) of Research at the University of California, Davis (“UC Davis”). In this role, you were responsible for seeking out and establishing innovative partnerships between UC Davis and corporate partners to facilitate technology transfer between the university and private industry. During your time overseeing the UC Davis Office of Research, it was organized into three units: Venture Catalyst, which you concurrently served as Executive Director of, in addition to your AVC role; the Office of Corporate Relations, run by a Director who reported directly to you; and Innovation Access, run by an Executive Director who also reported directly to you.

In March of 2019, UC Davis entered into a letter of intent/letter agreement (the “LOI”) with a biotechnology startup, Sierra BioPharma, Inc. (the “Company”). The original term of the LOI was six months, from March 22, 2019 to September 22, 2019. UC Davis granted the Company a number of six-month extensions, until the LOI finally expired in April of 2023. The LOI itself, and its amendments, did not convey any financial or substantive rights to the Company, beyond an exclusive right for the Company to enter into negotiations with the UC Davis in the future for an option or license to certain patents owned by UC Davis.

Though you were employed by UC Davis when the LOI went into effect, it was entered into by the Executive Director of Innovation Access. While this employee reported directly to you, they were delegated complete authority to negotiate and execute all intellectual property-related agreements on behalf of UC Davis. You were not involved in the negotiation, execution, or extension of the LOI, nor did you participate in, or even have insight into, these discussions. Moreover, neither Venture Catalyst, nor the Office of Corporate Relations—both of which also fell under your purview—had authority to negotiate or execute agreements relating to intellectual property (IP) on behalf of UC Davis.

You are now an advisor to the Company and a member of its board of directors. Through your consulting firm, VentureEdge, LLC, you receive compensation from the Company in the form of equity that vests over time. You now ask whether, as former AVC for Research at UC Davis, the Act’s revolving door provisions permit you, as part of consulting work, to communicate with UC Davis regarding the renewal of its LOI with the Company. Specifically, you ask whether you are permitted to communicate with UC Davis in an effort to persuade the university to continue supporting the Company by maintaining its foundational IP, which UC Davis owns subject to the expired LOI. You have not advised and are not currently advising the Company regarding its LOI negotiations with UC Davis, ongoing or past, nor have you communicated on behalf of the Company with anyone at UC Davis who has authority to negotiate the LOI on behalf of the university.

## ANALYSIS

A public official who leaves state service is subject to two types of post-governmental employment provisions under the Act: the one-year ban and the permanent ban. These provisions

are commonly referred to as the “revolving door” prohibitions. (Sections 87400-87406 and Regulation 18746.1.)

### The One-Year Ban

The Act’s “one-year ban” prohibits designated employees of state administrative agencies, for one year after leaving state service, from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency decisions that involve the making of general rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. (Section 87406(d)(1).)

You left state service in August 2019, so the one-year ban is no longer applicable to you.

### The Permanent Ban

The permanent ban on “switching sides” prohibits a former state administrative official from being paid to represent any other person before their former agency in a proceeding that the official participated in previously. Specifically, the permanent ban prohibits paid appearances and communications while representing any other person—as well advising, consulting, or assisting in representing any other person—before any state administrative agency in a proceeding involving specific parties (such as a state contract), in which the official previously participated. (See Sections 87401-87402; Regulation 18741.1.) The permanent ban is a lifetime ban and applies to any judicial, quasi-judicial, or other proceeding in which the former official participated while they served as a state administrative official, in which the State of California is a party or has a direct and substantial interest. (Section 87401).

You are a former AVC at UC Davis, a state agency. (Section 87400 Regulation 18249(a).)<sup>2</sup> Therefore, you are a former “state administrative official” for purposes of the permanent ban.

The next issue is whether you are being paid to represent another person—or to advise, consult, or assist in representing any other person another person—other than the State of California before your former agency, UC Davis. Your proposed consulting work would involve being compensated (in equity) by the Company, as a member of its board, to communicate with UC Davis regarding the renewal of the LOI. In this role, you might communicate with UC Davis in an effort to persuade the university to continue supporting the Company by maintaining its foundational IP, which UC Davis owns subject to the expired LOI. Thus, your proposed work would involve being paid to represent or consult regarding the representation of another person before UC Davis.

Next, we must address whether the LOI is a “proceeding” for purposes of the permanent ban, and whether you previously “participated” in the LOI. The Act defines “Judicial, quasi-judicial or other proceeding” as “any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency ....” (Section

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<sup>2</sup> UC Davis is part of the University of California, a state agency established by the California Constitution.

87400(c.) The LOI is an agreement (i.e. a contract) between specific parties: The Company and UC Davis. Contracts fall squarely into the definition of “proceedings” under the permanent ban. Therefore, the LOI is a proceeding for purposes of the permanent ban (Section 87400(c).)

The permanent ban applies if a former official “participated” in a proceeding while employed by their former agency. An official is considered to have “participated” in a proceeding if the official took part in the proceeding “personally, and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information . . .” (Section 87400(d).) In addition, a former supervisor has participated in any proceeding that was “pending” before the official’s former agency and that was under his or her supervisory authority. (Regulation 18741.1 (a)(4). A proceeding falls under a supervisor’s “supervisory authority” if “[t]he supervisor “directly supervises the person performing the investigation, review, or other action involved in the proceeding including, but not limited to, assigning the matter for which the required conduct is taken.” (Regulation 18741.1 (a)(4)(B). According to the facts provided, you were not personally involved in negotiating or executing agreements relating to intellectual property on behalf of UC Davis. Likewise, you note that the Executive Director of Innovation Access was delegated authority to negotiate and executing all intellectual property-related agreements on behalf of UC Davis, and that neither you, nor other staff who reported to you, influenced, had knowledge of, or participated in any way discussions with the Company regarding the LOI. Nevertheless, the Executive Director of Innovation Access, to whom these responsibilities were delegated, reported directly to you. Thus, the LOI negotiations between UC Davis and the Company fell under your “supervisory authority” for purposes of Regulation 18741.1(a)(4)(B) because you “directly supervised” the Executive Director of Innovation Access.<sup>3</sup>

Because you directly supervised the Executive Director of Innovation Access at the time of their work on the LOI with Sierra BioPharma, the permanent ban applies to your proposed consulting work for the Company and prohibits you from advising the Company concerning the LOI.

If you have other questions on this matter, please contact me at (916) 322-5660.

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<sup>3</sup> By contrast, in the *Whitelam* Advice Letter (A-23-006), we previously advised that the permanent ban did not prohibit a former agency director from advising clients regarding procurements before her former agency, because the director’s involvement in the procurement proceeding was limited to the high-level and general determination to initiate the process, she did not directly supervise the staff who developed and oversaw the proceedings, and she left the agency prior to the start of proceedings involving specific parties.

Sincerely,

Dave Bainbridge  
General Counsel

A handwritten signature in black ink, appearing to read 'T. Lewis', with a stylized flourish at the end.

By: Toren Lewis  
Counsel, Legal Division

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