



## **Report of Random Audit of Lobbyist Rose Cox**

**February 2, 2009**

### **Introduction**

Registered lobbyist Rose Cox was randomly selected for audit on June 24, 2008. She was notified of her selection by letter of that same date. By letter of July 11, 2008, Tennessee Ethics Commission ("Commission") staff requested that Ms. Cox provide certain audit-related information in advance of scheduling an audit interview. Ms. Cox provided the requested information and participated in an audit interview that was held by mutual agreement on September 8, 2008. The interview took place at the offices of the Commission.

### **Audit authority and Scope**

Under the Ethics Reform Act of 2006 ("Act"), the Commission has a duty to audit each year "the registration statements, amendments to registration statements and reports of no more than four percent (4%) of all lobbyists" to determine compliance with the Act. The lobbyists are selected randomly. Tenn. Code Ann. § 3-6-308(a)(7). The documents subject to audit are those which have been on file with the Commission less than two (2) years as of the time of the audit. Tenn. Code Ann. § 3-6-301(4)(A).

### **Audit objectives**

The overall objective of the audit was to determine whether the statements, amendments, and reports filed concerning the lobbyist in 2007 and 2008 were timely, accurate, complete, and otherwise in compliance with the Act. In order to achieve this objective, the following specific objectives were identified:

1. To determine whether the lobbyist and his or her employer(s) registered timely in 2007 and 2008;
2. To determine whether the lobbyist had entered into any prohibited contingency fee agreement(s);
3. To determine whether the compensation reported by the employer(s) for the period from October 1, 2007 through March 31 2008 correlated with the compensation received by the lobbyist;
4. To determine whether the lobbyist attended and paid for the required annual training in 2007 and 2008; and
5. To determine whether in-state events given by the lobbyist or the lobbyist's employer were in compliance with the requirements of the Act.

## Summary of Audit Conclusions

1. Ms. Cox and Amylin Pharmaceutical, Inc. (“Amlyn”), both registered timely.
2. The audit was unable to determine conclusively whether Amylin considered legislative outcomes in determining the amount of Ms. Cox’s annual performance bonus.
3. The compensation reported by Amylin for the period from October 1, 2007 through March 31, 2008, included compensation paid to two (2) outside lobbyists as well as Ms. Cox, but it does not appear that the amount paid to Ms. Cox was under-reported.
4. Ms. Cox paid for and attended the annual training given on August 12, 2008.
5. Ms. Cox did not give or participate in any in-state events in 2008.

Details regarding some or all of these conclusions follow.

### AUDIT CONCLUSIONS

#### **1. Ms. Cox and Amylin Pharmaceutical, Inc. both registered timely.**

A lobbyist is required to register within seven (7) days of entering into an agreement to provide lobbying services, regardless of when the lobbyist actually engages in lobbying.<sup>1</sup>

Ms. Cox is employed as a public affairs executive on an ongoing basis for Amylin. Her duties include lobbying. Her ongoing agreement to lobby for compensation was legally effective on the first day of the registration period, January 1, 2008. She and her employer both registered on January 7, 2008, within the time allotted.

#### **2. The audit revealed ambiguity on whether Amylin Pharmaceutical, Inc., considered legislative outcomes in determining the amount of Ms. Cox’s annual performance bonus.**

The Ethics Reform Act provides that no employer may pay, and no lobbyist may accept, any fee, compensation or bonus for lobbying “wherein the amount of the . . . compensation . . . is contingent upon achievement of an outcome deemed to be successful for the employer.”<sup>2</sup> Ms. Cox is covered by Amylin’s “Corporate Bonus Plan.” Under this plan, Ms. Cox’s eligibility for a bonus is based 40% on the performance of the company and 60% on her own performance. The standards for evaluating individual performance are in some flux. Company materials from March 2008 indicate that Ms. Cox’s individual performance is to be evaluated in part on her actions taken for or against specific legislation, and her role in development and implementation of an advocacy strategy. A bonus based on such actions would not violate the statute.

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<sup>1</sup> Tenn. Code Ann. § 3-6-302(a)(2). See Op. Tenn. Ethics Comm’n, No. 06-01 (Dec. 12, 2006).

<sup>2</sup> Tenn. Code Ann. § 3-6-304(k).

On the other hand, other materials voluntarily provided by Ms. Cox indicate that the employer might consider the “defeat” of undesirable legislation as a factor in determining performance. Since performance determines the amount of the bonus, any consideration of the “defeat” of specific legislation as a result of Ms. Cox’s lobbying efforts would violate the statute.

A detailed examination, beyond the scope of this audit, would be required to determine conclusively whether the current evaluation system provides for the payment of bonuses based on an outcome deemed successful for the employer. However, the ambiguity in the system, if unresolved, could leave Ms. Cox and her employer subject to citizen complaints or administrative action. The writer informed Ms. Cox that she should advise her employer of the prohibition so that the evaluation system can be adjusted to remove any question about payment of bonuses for lobbying success.

**3. The compensation reported by Amylin Pharmaceutical, Inc., for the audit period included compensation paid to two outside lobbyists, but was not inconsistent with the compensation reported by Ms. Cox.**

Each employer of a lobbyist is required to report “the aggregate total amount of lobbyist compensation paid by the employer.”<sup>3</sup> Since Ms. Cox is an in-house lobbyist for Amylin, Amylin is required to determine what portion of her compensation is attributable to lobbying. The Act provides that “[f]or purposes of the disclosure, compensation paid to any lobbyist who performs duties for the employer in addition to lobbying and related activities shall be apportioned to reflect the lobbyist's time allocated for lobbying and related activities in this state.” Tenn. Code Ann. § 3-6-303(a)(1).

Ms. Amylin stated she is and has been responsible for Amylin’s lobbying efforts in seven (7) different states. However, from September 2007 until late February 2008, the portion of Ms. Cox’s time spent on lobbying was less than ten percent (10%), and the remainder of her time was spent on monitoring and patient advocacy. For this period, Amylin Pharmaceutical reported that it also employed two outside lobbyists. After including the amount paid to these outside lobbyists for lobbying Tennessee state officials and related activities, Amylin should add the amount of Ms. Cox’s compensation<sup>4</sup> which is attributable to such lobbying and activities.

A reasonable method of calculation as to Ms. Cox’s compensation would start with dividing her total annual compensation in half, to reflect the amount for a six (6) month period. Next, the result would be multiplied by the appropriate figure to reflect the percentage of time spent lobbying. Finally, that result would be multiplied by an

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<sup>3</sup> Tenn. Code Ann. § 3-6-303(a)(1).

<sup>4</sup> The specific amount of Ms. Cox’s salary is confidential random audit information and therefore not included in this public report. Tenn. Code Ann. § 3-6-308(c). “Random audit information” is defined in Tenn. Code Ann. § 3-6-301(4)(A).

appropriate figure to reflect the percentage of lobbying time attributable to Tennessee rather than the other six (6) states. The bases for the percentages should be retained for reference in doing future calculations and in responding to future audits.

Amylin reported total aggregate lobbyist compensation paid to all three lobbyists as less than ten thousand dollars (\$10,000). The ten thousand dollar (\$10,000) figure is higher than the amount that results from application of the method described above, even if one assumes that the time spent on Tennessee lobbying is roughly equal to the average time spent in all seven states. Thus, it does not appear that the compensation paid to Ms. Cox for lobbying was under-reported. It is unknown whether the ten thousand dollar (\$10,000) figure is large enough to also include the amounts paid to the other two (2) lobbyists.<sup>5</sup>

**4. Ms. Cox paid for and attended the annual training given on August 12, 2008.**

**5. Ms. Cox did not give or participate in any in-state events in 2008.**

Report completed by:



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<sup>5</sup> This report does not address the question whether such a determination would be within the scope of this random audit. In any event, current staff resources do not permit expenditure of the additional time on this audit that would be necessary in order to determine whether there is such a correspondence.