



**Contra
Costa
County**

To: Board of Supervisors
From: Sharon L. Anderson, County Counsel
Date: June 16, 2015

Subject: Consent to Waive Conflict of Foley & Lardner, LLP

RECOMMENDATION(S):

APPROVE and AUTHORIZE County Counsel or her designee to execute on behalf of the County a conflict waiver acknowledging a potential conflict of interest and consenting to Foley & Lardner LLP representing two pharmaceutical companies, Pfizer Inc. and Novartis Pharmaceuticals Corporation, in matters unrelated to the law firm's work for the County, while continuing to represent the County in other matters.

FISCAL IMPACT:

There is no fiscal impact.

BACKGROUND:

Foley & Lardner LLP (Foley) provides specialized legal services to the County's Health Services Department in connection with various health care matters. Foley has been asked to review the County's pharmacy purchasing compliance process in relation to claims submitted for reimbursement under the Medicaid Drug Rebate Program. The services to be provided by Foley include a review of billings related to drugs manufactured by Pfizer Inc. (Pfizer) and Novartis Pharmaceuticals Corporation (Novartis). The rebate program impacts both the Contra Costa Health Plan and the Contra Costa Regional Medical Center.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY

☐ RECOMMENDATION OF BOARD

ADMINISTRATOR

COMMITTEE

Action of Board On: **06/16/2015** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Mary N. Piepho, District III Supervisor
Karen Mitchoff, District IV Supervisor

ABSENT: Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: June 16, 2015

David Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Kate Andrus, Deputy County Counsel (925) 335-1800

By: Stacey M. Boyd, Deputy

Attached are two letters from Foley. One requests that the County acknowledge and waive a potential conflict of interest that exists in a situation in which Foley is representing, in unrelated matters, both Pfizer and the County. The other requests that the County acknowledge and waive a potential conflict of interest that exists in a situation in which Foley is representing, in unrelated matters, both Novartis and the County. County Counsel recommends that the County's consent in these instances be limited to

BACKGROUND: (CONT'D)

potential conflicts of interest only. For that reason, before being executed by the County Counsel or her designee, language substantially similar to the following would be inserted in both letters:

“By signing this letter, the County is consenting only to a potential conflict of interest. If an actual conflict arises, Foley & Lardner LLP must immediately notify the County Counsel of Contra Costa County in writing. See attached Board Order dated June 10, 2015.”

In the absence of the informed written consent of each client, the California Rules of Professional Conduct prohibit an attorney from representing a client in one matter and at the same time representing a second client in a separate matter if the second client's interests in the separate matter are adverse to those of the first client. (Rule 3-310(C)(3).)

In these instances, the representation Foley will provide to the County is unrelated to the representation it provides to Pfizer and Novartis. And by limiting the scope of each conflict waiver to a potential conflict, the County Counsel's office will be able to take appropriate steps if an actual conflict arises between the County and Pfizer or Novartis. Staff for the Health Services Department have advised that they do not object to the potential conflicts and recommend waiver.

CONSEQUENCE OF NEGATIVE ACTION:

Foley would not be able to simultaneously represent Pfizer, Novartis and the County. The result would likely be a delay in the implementation of the review of the County's pharmacy purchasing compliance process.

CHILDREN'S IMPACT STATEMENT:

Not applicable.

ATTACHMENTS

Waiver of Conflict Letter - Novartis

Waiver of Conflict Letter - Pfizer