

Kaufman, Linda

From: FDAEthics@fda.gov
Sent: Thursday, December 1, 2022 9:58 AM
To: Fink, Doran; (b) (6)
Cc: FDA Ethics_Advice; McVittie, Loris
Subject: [Ethics] FDA Post-Employment Guidance

Dear DORAN FINK,

Thank you for completing your mandatory FDA exit requirements and submitting your post-employment ethics information. Based upon the post-employment information you have provided, the post-employment guidance below has been tailored to your situation. Please refer to the [Summary of Post-Employment Restrictions](#) to review the full details of each restriction.

Applicable Advice and Post-Employment Restrictions:

- **18 US Code 207(a)(1) Permanent Ban on "Switching Sides."** Former employees are subject to a lifetime ban on communicating to or appearing before the Government on behalf of their new employer or anyone else regarding specific party matters in which they participated personally and substantially during their entire government service. This lifetime restriction focuses on particular matters involving specific parties in which employees participated personally and substantially. The phrase "particular matter involving specific parties" means a proceeding affecting the rights of the parties or an isolated transaction or related set of transactions between identifiable parties. The phrase encompasses investigations, applications, requests for rulings or determinations, contracts, grants, controversies, claims, charges, accusations, arrests, or judicial or other proceedings. The phrase does not include general rulemaking, legislation, or policy issues that apply to entire industries or segments of society. The phrase "personal and substantial participation" means direct participation as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise. It includes the participation of a subordinate when the former employee actually directed that subordinate in the matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. This restriction prohibits a former Government employee only from engaging in certain actions in connection with the covered matters. They do not prohibit the former employee from other activities, including working "behind the scenes" with regards to the covered matters so long as the former Government employee does not make any communication to, or appearance before, a Federal court or agency "with the intent to influence." A communication or appearance is made with the intent to influence when made for the purpose of seeking a Government ruling, benefit, approval, or other discretionary Government action; or affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy. The term "on behalf of anyone" means you are acting with the consent of the other person, whether express or implied, or if you are subject to some degree of control or direction by the other person in relation to the communication or appearance. Communications or appearance to Government officials purely on your own behalf are permitted.
- **18 US Code 207(a)(2) Two-Year Official Responsibility Provision.** For two years after leaving federal employment, former employees cannot make representational communications to or appearances before the Government regarding specific party matters that were pending under their official responsibility during their last year of government service.

Please know that you may contact the FDA Ethics Hotline at (240) 402-1111 or by email at FDAethics_Advice@fda.hhs.gov with any questions you may have regarding these post-employment restrictions even after you leave the Government.