



CANCER PREVENTION & RESEARCH
INSTITUTE OF TEXAS

MEMORANDUM

TO: OVERSIGHT COMMITTEE MEMBERS
FROM: WAYBE ROBERTS, CHIEF EXECUTIVE OFFICER
SUBJECT: SECTION 102.1062 WAIVER—MONTGOMERY FY 2020
DATE: AUGUST 1, 2019

Waiver Request and Recommendation

I request that the Oversight Committee approve a conflict of interest waiver for FY 2020 for Mr. Will Montgomery, presiding officer of the CPRIT Oversight Committee, pursuant to Health & Safety Code Section 102.1062 “Exceptional Circumstances Requiring Participation.” Mr. Montgomery’s waiver is the same as the one approved by the Oversight Committee for FY 2018. The waiver is necessary for Mr. Montgomery to fully participate in the grant award approval process. Together with the waiver’s proposed limitations, adequate protections are in place to mitigate the opportunity for factors other than merit and established criteria to affect the award of grant funds.

Background

Mr. Montgomery is a partner at Jackson Walker L.L.P., a long-time, Texas-based law firm that employs more than 350 attorneys. Mr. Montgomery’s legal practice focuses on disputes related to the financial services industry, including regulatory investigations, enforcement proceedings, and internal investigations relating to securities, options, derivatives, commodities, and futures. Mr. Montgomery does not personally represent CPRIT grant recipients; however, some lawyers employed by Jackson Walker provide legal services to the following grant applicants and grant recipients:

- Rice University
- Texas A & M University System
- Texas A & M System Technology Commercialization
- Texas A & M Institute for Biosciences & Technology
- Methodist Hospital System (Houston)
- The University of Texas Southwestern Medical Center
- The University of Texas School of Public Health
- The University of Texas Medical Branch, Galveston
- Children's Medical Center Research Institute

- The University of Texas San Antonio
- The University of Texas at Austin
- The University of Texas Health Science Center at Houston
- The University of Texas M.D. Anderson Cancer Center
- Texas Association of Nurse Anesthetists
- University General Health system
- MHMR Tarrant County
- Texas Tech University
- Texas Tech University Health Science Center
- UNT Health Science Center
- Baylor University
- Baylor College of Medicine

Health & Safety Code Section 102.106(c)(4) mandates that a professional conflict of interest exists if an Oversight Committee member represents an entity applying to receive or receiving CPRIT funds. Similarly, Texas Administrative Code Section 702.11(d) finds that there is a professional conflict of interest if an Oversight Committee member “represents in business or law an entity receiving or applying to receive money from the Institute...”

The entities listed above were clients of the law firm prior to Mr. Montgomery’s appointment to the Oversight Committee. Although Mr. Montgomery does not perform legal work for these entities or supervise anyone who does so, he has previously recused himself from participating in the grant award process related to these entities out of an abundance of caution. He does not have an economic interest in the revenues paid to Jackson Walker by these entities, aside from his position as a partner of the firm. However, Mr. Montgomery’s percentage of ownership interest in the law firm is not impacted whether these entities are clients of the firm.

It is reasonable to expect that the same conflict will affect Mr. Montgomery’s participation in more than one grant review cycle in the 2020 fiscal year as well. CPRIT’s administrative rule Section 702.17(3) authorizes the Oversight Committee to approve a waiver that applies for all activities affected by the conflict during the fiscal year.

Exceptional Circumstances Requiring Mr. Montgomery’s Participation

To approve a waiver, the Oversight Committee must find that there are exceptional circumstances justifying the conflicted individual’s participation in the review process. There are compelling reasons warranting Mr. Montgomery’s participation in the review process when he would otherwise recuse himself because of the conflict. One of the principal duties for an Oversight Committee member is to approve grant award recommendations submitted by the Program Integration Committee. The statute requires a two-thirds vote of the Oversight Committee to approve a grant

award. The significant majority of CPRIT's grant applicants and grant recipients are academic institutions, including many of the entities listed above. Excluding Mr. Montgomery from participation in the decision-making process related to grant awards reduces the number of Oversight Committee members able to perform the critical task of reviewing information about potential grantees and the review process associated with the grant recommendations.

The proposed limitations and CPRIT's existing process and procedures will mitigate substantially any potential for bias.

Proposed Waiver and Limitations

In granting the waiver of the conflict of interest set forth in Health & Safety Code Section 102.106(c)(4), I recommend that the Oversight Committee permit Mr. Montgomery to participate in the review process for applications submitted by the following entities, subject to the limitations stated below:

- Rice University
- Texas A & M University System
- Texas A & M System Technology Commercialization
- Texas A & M Institute for Biosciences & Technology
- Methodist Hospital System (Houston)
- UT Southwestern
- UT School of Public Health
- UT Medical Branch, Galveston
- Children's Medical Center Research Institute
- UT San Antonio
- UT Austin
- UT Health Science Center at Houston
- UT M.D. Anderson Cancer Center
- Texas Association of Nurse Anesthetists
- University General Health system
- MHMR Tarrant County
- Texas Tech University
- Texas Tech University Health Science Center
- UNT Health Science Center
- Baylor University
- Baylor College of Medicine

Important Information Regarding this Waiver and the Waiver Process

- The Oversight Committee may amend, revoke, or revise this waiver. Approval for any change to the waiver granted shall be by a vote of the Oversight Committee in an open meeting.
- CPRIT limits this waiver to the conflict of interest specified in this request, Health & Safety Code Section 102.106(c)(4). To the extent that Mr. Montgomery has a conflict of interest with an application submitted by an entity listed herein that is not the conflict identified in Section 102.106(c)(4), then Mr. Montgomery will follow the required notification and recusal process.
- CPRIT limits the waiver to the entities specified in the request and based upon the circumstances stated herein. If circumstances change such that Mr. Montgomery personally represents one of the entities listed herein or supervises the work of someone representing the entity, he will notify the Chief Executive Officer and the presiding officer of the Oversight Committee.