



CANCER PREVENTION & RESEARCH  
INSTITUTE OF TEXAS

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**MEMORANDUM**

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**To:                   OVERSIGHT COMMITTEE MEMBERS**  
**From:               WAYNE R. ROBERTS, CHIEF EXECUTIVE OFFICER**  
**Subject:           SECTION 102.1062 WAIVER – AMY MITCHELL**  
**Date:               AUGUST 11, 2016**

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**Waiver Request and Recommendation**

I request that the Oversight Committee approve a conflict of interest waiver for FY 2017 for Ms. Amy Mitchell, CPRIT Oversight Committee member, pursuant to Health & Safety Code Section 102.1062 “Exceptional Circumstances Requiring Participation.” The waiver is necessary for Ms. Mitchell 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 the award of grant funds to be driven by anything other than merit and established criteria.

**Background**

Ms. Mitchell is Senior Counsel at Norton Rose Fulbright, an international law firm with 3800 attorneys. Her practice focuses on matters related to improved and unimproved real property including sales and acquisitions, leases, ground leases, subleases, real estate financing, real estate development, environmental issues affecting real property, construction matters for owners, general contractors and subcontractors, and the formation of entities to acquire, develop, finance and operate real property. Ms. Mitchell does not personally represent CPRIT grant recipients; however, some lawyers employed by Norton Rose Fulbright provide legal services to the following grant applicants and grant recipients:

- University Health System
- University of Texas at Austin, Arlington, Brownsville, Dallas, and El Paso
- University of Texas-Pan American
- University of Texas of the Permian Basin
- University of Texas Medical Branch at Galveston
- University of Texas Health Science Center at San Antonio
- University of Texas M.D. Anderson Cancer Center
- University of Texas Southwestern Medical Center
- University of Texas Health Science Center at Houston, and Tyler
- Angelo State University
- University of Houston

- University Houston-Clear Lake, Downtown, and Victoria,
- Baylor University
- Baylor College of Medicine
- Baylor Research Institute
- Methodist Hospital Research Institute
- Rice University
- Texas Tech University
- Texas Tech University Health Science Center
- Texas A&M University
- Prairie View A&M University
- Texas A&M University Commerce, Kingsville, Corpus Christi, Texarkana, Central Texas, and San Antonio
- Tarleton State University
- West Texas A&M University
- Texas A&M International University
- Texas A&M University Health Science Center
- Texas A&M University System
- Texas A&M Health Science Center
- Texas A&M Engineering Experiment Station
- Texas A&M Agrilife Extension Services
- Texas A&M Agrilife Research

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 Ms. Mitchell’s appointment to the Oversight Committee. Although Ms. Mitchell does not perform legal work for these entities or supervise anyone who does so, she has previously recused herself from participating in the grant award process related to these entities out of an abundance of caution. She does not have an economic interest in the revenues associated with these entities paid to Norton Rose Fulbright, aside from her position as Senior Counsel at the firm.

It is reasonable to expect that the same conflict will affect Ms. Mitchell’s participation in more than one grant review cycle in this 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 Ms. Mitchell's Participation**

In order 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 Ms. Mitchell's participation in the review process when she would otherwise be excluded 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 vast majority of CPRIT's grant applicants and grant recipients are academic institutions, including many of the entities listed above. Excluding Ms. Mitchell from participation in the decision-making process related to grant awards reduces the number of Oversight Committee members that are 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 substantially mitigate 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 Ms. Mitchell be permitted to participate in the review process for applications submitted by the following entities, subject to the limitations stated below:

- University Health System
- University of Texas at Austin, Arlington, Brownsville, Dallas, and El Paso
- University of Texas-Pan American
- University of Texas of the Permian Basin
- University of Texas Medical Branch at Galveston
- University of Texas Health Science Center at San Antonio
- University of Texas M.D. Anderson Cancer Center
- University of Texas Southwestern Medical Center
- University of Texas Health Science Center at Houston, and Tyler
- Angelo State University
- University of Houston
- University Houston-Clear Lake, Downtown, and Victoria,
- Baylor University
- Baylor College of Medicine
- Baylor Research Institute
- Methodist Hospital Research Institute
- Rice University
- Texas Tech University

- Texas Tech University Health Science Center
- Texas A&M University
- Prairie View A&M University
- Texas A&M University Commerce, Kingsville, Corpus Christi, Texarkana, Central Texas, and San Antonio
- Tarleton State University
- West Texas A&M University
- Texas A&M International University
- Texas A&M University Health Science Center
- Texas A&M University System
- Texas A&M Health Science Center
- Texas A&M Engineering Experiment Station
- Texas A&M Agrilife Extension Services
- Texas A&M Agrilife Research

**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.
- This waiver is limited to the conflict of interest specified in this request, Health & Safety Code Section 102.106(c)(4). To the extent that Ms. Mitchell 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 Ms. Mitchell will follow the required notification and recusal process.
- The waiver is limited to the entities specified in the request and based upon the circumstances stated herein. If circumstances change such that Ms. Mitchell is required to personally represent one of the entities listed herein or to supervise the work of someone representing the entity, she will notify the Chief Executive Officer and the presiding officer of the Oversight Committee.