

December 4, 2003

Mr. Andrew Card, Chief of Staff
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500
&
Senator Bill Frist, Senate Majority Leader
461 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Card and Senator Frist:

It was deeply unsettling to read Mr. Robert Pear's story in The New York Times about the (previously, undisclosed) granting of a waiver of ethics rules for Mr. Tom Scully. Surely this violates the President's expectations: at the beginning of his Administration he was shown on national television instructing his senior White House staff that they were to stay "far away from the line" or any gray areas . . . yet now, granting waivers? It is potentially embarrassing to Republicans in the Senate if it comes to light that Senator Frist (for example) was not informed of the waiver.

What would we think if this was a senior Department of Defense official involved in negotiating tens of billions of dollars of contracts? Or a Department of Energy official - and perhaps by now there are several like Mr. Scully? - negotiating the energy bill? Waivers were never intended for major cases. This is a damaging message to send.

You cannot take government ethical standards seriously if you now grant waivers for cases like Mr. Scully's involving tens of billions of dollars - and with public disclosure of waivers postponed and disclosed only after the negotiating process.

Nobody would judge Mr. Scully without reading the documents. But leaving this to Mr. Scully's charm and newspaper reporters is bad precedent and sends the wrong message - to the dismay of a public that is serious about public policy and in the Executive branch. Isn't one of the President's greatest vulnerabilities a Teapot Dome type of scandal involving government officials who think the standards are weakening and that they are protected because Republicans and friends control the White House and Justice Department, there are Republican majorities in both the House and Senate, and the conflicting activities are with outsiders who are Republican supporters?

May I suggest:

- The President issue orders that waivers of government ethics rules cannot be done by Departments and agencies, but must be centralized at OMB?

- The President issue orders that the granting of waivers of government ethics rules must be disclosed immediately to the public - and, specifically, to members of the Congress and the

Executive branch with whom the official is dealing on matters covered by the waiver?

- That Republicans in the Senate take the lead to hold brief hearings about these issues - putting Mr. Scully's written permission on the record, and a statement by Mr. Scully and the officials granting the waiver? This sends a proper and cautionary message to any future officials like Mr. Scully and waiver-granting officials - i.e., that any waiver of government ethics rules involving activities of this magnitude (negotiating benefits worth billions of dollars) should anticipate public and bipartisan scrutiny. If nothing amiss is found, there is a good outcome for everybody. If Senators - or the President - have misgivings about what they learn, Republicans have the credit of their leadership in examining the problem and taking steps to assure that the Senate's expectations, and the President's standards, are enforced.

Sincerely,

(Dr.) Lloyd S. Etheredge, Director
Government Learning Project

cc: Mr. I. Lewis Libby

December 3, 2003 - The New York Times

Health Industry Bidding to Hire Medicare Chief

By ROBERT PEAR

WASHINGTON, Dec. 2 — The federal official who runs Medicare and was intimately involved in drafting legislation to overhaul the program is the object of a bidding war among five firms hoping to hire him to advise clients affected by the measure.

Though the official, Thomas A. Scully, is not widely known outside Washington, his exhaustive knowledge of the Medicare program and the intricacies of the legislation, approved by Congress last week, would make him a prize catch for any law firm or private equity firm.

In an interview on Tuesday, Mr. Scully said that his discussions with potential employers complied with federal ethics regulations and that he had seen no reason to recuse himself from work on the legislation. He said he had consulted with the top ethics officer for the Department of Health and Human Services and received a waiver allowing him to continue work on the bill. The department confirmed his account.

Mr. Scully has made no secret of the fact that he has been looking for jobs outside the government for more than six months — even as he spent hundreds of hours in closed sessions with House and Senate negotiators working out countless details of the legislation, which makes the biggest changes in Medicare since creation of the program in 1965.

Experts on the federal ethics law said they could not judge the propriety of Mr. Scully's actions without knowing the terms of the waiver, which have not been made public.

Mr. Scully said Tuesday evening, after several earlier interviews about his job negotiations, that he was submitting a letter of resignation and would step down on Dec. 16. He said he had not decided which of the five jobs to take.

Gail E. Shearer, a health policy analyst at Consumers Union, said Mr. Scully's discussions with prospective employers were troubling. "At a time when there are questions about whether the Medicare legislation serves special interests or consumers, we want to know that our public officials have their minds totally focused on doing what's best for consumers," she said.

For his part, Mr. Scully said, "I'm not the most popular guy in the world, but nobody has ever accused me of being other than honest."

After federal employees resign, they are subject to a permanent ban on "switching sides." They cannot try to influence the government on a "particular matter" in which they were personally and substantially involved. In addition, federal law establishes a one-year "cooling-off period," during which former senior officials are not supposed to lobby at all before the agencies where they worked. But they often give clients informal advice about navigating the federal bureaucracy.

President Bush plans to sign the Medicare bill, a centerpiece of his domestic agenda, on Monday. The bill not only offers drug coverage to all 40 million beneficiaries, but also changes Medicare payments to most health care providers.

Mr. Scully, who served as a White House budget official in the first Bush administration, has run Medicare and Medicaid since May 2001.

In the interview on Tuesday, Mr. Scully said that he tentatively decided last May to leave the government but that he stayed on, at the request of the Bush administration, to work on the Medicare bill.

"I have been talking to a number of law firms and private equity firms," he said. "My hope is to combine work at a Washington law firm and a Wall Street investment firm."

Mr. Scully said that after consulting with the ethics officer he saw no reason to disqualify himself from work on the legislation or on regulations that affected clients of the five firms.

"My job negotiations were not serious enough," he said.

A summary of ethics rules issued by the Department of Health and Human Services says employees who have begun seeking jobs in the private sector must immediately recuse themselves from "any official matter" that involves the prospective employer. This covers legislative initiatives and proposed rules, the document says.

A spokesman for the department said that Mr. Scully's waiver allowed him to work on "matters of general applicability like the Medicare reform bill" while he talked to potential employers.

As administrator of the Centers for Medicare and Medicaid Services, Mr. Scully receives a salary of \$134,000 a year. Lawyers and lobbyists said he could easily earn five times that in the private sector because he has extensive knowledge of the Medicare program and can offer clients access to senior administration officials.

In his last job, as president of the Federation of American Hospitals, a trade group for investor-owned hospitals, Mr. Scully made \$675,000 a year.

No one has suggested that Mr. Scully took any position in return for a job offer. In some cases, he took positions contrary to those of the lobbyists with whom he was discussing employment. But sometimes their positions coincided.

Mr. Scully said he had been talking with three law firms and two private investment firms. He identified them as follows:

¶ Alston & Bird. The firm, based in Atlanta, represents the National Association for Home Care and Johnson & Johnson, among other clients. The Washington office is headed by a college friend of Mr. Scully's and includes Bob Dole, the former Senate Republican leader.

¶ Baker, Donelson, Bearman, Caldwell & Berkowitz. The firm represents the Disease Management Association of America, which scored a major victory in the Medicare bill, authorizing payment for services provided by its members to people with chronic illnesses. The firm, which includes Linda H. Daschle, wife of the Senate Democratic leader, has also represented the American Association for Homecare, Amgen and the Federation of American Hospitals.

¶ Ropes & Gray. The firm, based in Boston, represents the Pharmaceutical Research and Manufacturers of America, the main lobby for the brand-name drug industry. It focused on changes in drug patent laws, one of the hottest issues in the Medicare bill. It also represents many drug companies including Abbott Laboratories, AstraZeneca, Bristol-Myers Squibb, Eli Lilly, Novartis and Pfizer.

¶ Welsh, Carson, Anderson & Stowe. A private equity investment firm based in New York, it has invested in many health care businesses. It has a major stake in U.S. Oncology, which manages cancer treatment centers and lobbied

for more adequate payments under the Medicare bill.

¶Texas Pacific Group. A private investment partnership, it manages assets worth more than \$13 billion. It helped rescue Oxford Health Plans, which suffered severe financial problems while Mr. Scully was a member of Oxford's board.

James C. Duff, managing partner in the Washington office of Baker, Donelson, said: "Our firm would be a perfect fit for Tom because we have built one of the top health care practices in the country. We do both legal and lobbying work. Tom's recent experience at the highest levels of the government makes him very attractive to our firm."