

Consulting Management Committee
UCHC Request for Action #1

Date: January 28, 2008

Submitted by: Scott Wetstone, Director of the UCHC Faculty Consulting Office

Proviso

Public Act 2007-166 exempts the faculty and members of the AAUP faculty bargaining unit from subsections b and c of Section 1-84 of the general statutes. These sections address outside employment and ban situations that would: a) impair independence of judgment as to official duties, b) involve the disclosure of confidential information acquired in the course of State employment, or c) result in financial gain for the employee, the employee's family or business associates through use of his/her state office or position.

This exemption only applies when a set of requirements is addressed. Among these requirements is that the Board of Trustees develops policies that ensure that: a) the employee engaged in consulting is not inappropriately using university proprietary information, b) the employee engaged in consulting does not have an interest that interferes with the proper discharge of his or her State duties, and c) there are procedures in place to ensure the appropriate disclosure, review and management of conflicts of interest.

Final approval of requests for consulting reside with the chief academic officer and/or his/her designee¹. The consulting procedures approved by the Board of Trustees established the Consulting Management Committee (CMC) with the role of providing advice to the CAO especially in the areas of identifying, reviewing and when necessary managing conflicts of interest. The ability to manage conflicts of interest is unique for those covered under 2007-166.

Description of Issue

A conflict of interest may exist when a faculty member engages in a consulting activity with a vendor or potential vendor of the Health Center² AND the faculty members plays a role in the purchasing decision process that might impact that vendor. Such situations need to be assessed in order to determine whether the CAO should accept the request to consult, deny it or whether a conflict of interest management plan is necessary.

Medical and dental supplies, equipment and pharmaceuticals are a subset of purchasing decisions often with high monetary value and often involving faculty. The expert advice of

¹ Hereinafter referred to as the CAO.

² Conflicts of interest may be real (i.e. the compensation paid biased the decision making of the conflicted individual) or perceived (while the decision making wasn't biased by the compensation, a 'person on the street' might worry that such a bias was injected into the decision making process.) Henceforth the term conflict of interest or Col will refer to both these situations.

faculty is considered beneficial to these purchasing decisions. Unnecessarily recusing such faculty members from the process could be detrimental to the Health Center.

My questions related to the faculty's role in purchasing medical and dental supplies, equipment and pharmaceuticals are:

- 1) In the situation in which a health professional writes prescriptions for a product and has a consulting arrangement with the maker of such a product or its competitors³, should the CAO automatically disapprove such requests for consulting? Should the CAO automatically require a Col management plan to be developed and implemented?
- 2) In the situation that the contracting entity is a vendor of medical supplies, equipment or pharmaceuticals, should additional steps be added to the standard process used by the UCHC Faculty Consulting Office for identifying conflicts of interest?
- 3) In the situation that the contracting entity is a vendor of medical supplies, equipment or pharmaceuticals and a Col is determined to exist,, are there any standard management plans that can be assigned routinely by the UCHC Faculty Consulting Office without the need to bring such cases to the Consulting Management Committee?

Previous Opinion(s) of the Office of State Ethics

In a OSE staff lawyer's written opinion, the simple act of writing a prescription was deemed to be a purchasing decision that would then create an unacceptable conflict of interest if the contracting entity, or its competitors, were a maker of products prescribed. Therefore, they would ban such a health professional from consulting with such contracting entities.

The OSE is also concerned that the contracting entity may have asked the health professional to be a consultant because of that person's State position (i.e. as a prescription writer at UCHC.)

Discussion

OSE's concern about the link between consulting and prescription writing is understandable, at least in theory. However, the ban they would impose would have extreme negative consequences on the clinical faculty's ability to consult. The threat of this ban was a major stimulus for the university to seek the consulting carve out from the State Ethics Code.

Equally or more importantly, the University believes that its faculty clinicians have such high professionalism, especially in putting the health of their patient first and foremost above all other issues, that it would be rare that a contracting entity could bias such decision making. The rare situations of even potential concern would be when total compensation paid to a consultant is high or when the compensation is out of proportion to the effort and time expended for the consulting activity. Risk factors for such situations may include very

³ Sometimes a manufacturer channels money paid to a consultant through third parties it controls. While such arrangements are not always easily detectable, these situations are viewed as if the consulting arrangement was made with the manufacturer itself.

expensive unit price for a product or such high volume that total value of doing business with the Health Center is great.

Another situation deserving attention is when a faculty member makes or influences institution wide purchasing decisions (as opposed to decisions impacting their own individual patients through prescription writing as just discussed). Such decisions are often made by standing committees which include the formulary (pharmacy) committee, the operating room committee and the dental clinical affairs committee. These groups establish which medical and dental products will be available for use at UCHC. Special ad hoc committees also are used when making major equipment, software and similar purchases. The faculty's participation on these committees brings much needed expertise, perhaps the same expertise that makes them attractive as consultants.

It may be possible to manage CoIs in this situation by notifying the other people involved in the purchasing process of the consulting arrangement or by recusing the faculty member from the process completely. However, the CAO may determine the faculty member's participation in the purchasing decision is of such institutional value as to prohibit the consulting arrangement instead.

The lynchpin to the faculty consulting process is the integrity of faculty member, both in terms of honoring State statutes and University policies, as well as providing honest and complete information on their request form to engage in consulting. One field of data on this form is a description of what role the faculty member has while acting as a State employee in making decisions and/or influencing decisions that could impact the contracting entity.

Some, if not many, faculty members do not appear to have a good understanding of what information to provide on this part of the request form. This is understandable in an environment in which different parties may have different legitimate opinions as to the materiality of one's decision making/influencing role and the difference between making a biased decision rather than a simple perception that a conflict of interest may exist.

While it is the University's policy that all the data elements on the consulting request form be completed fully and accurately, sending such incomplete forms back to the requestor not only involves additional work by all, it could delay the approval process such that the approval cannot be obtained prior to the start of the activity. This would either mean the consulting cannot be performed or that the requestor is in violation of University policy and that the exemptions obtained under Public Act 2007-166 are not valid for this situation.

There are situations that occur frequently in which there is no or a very unlikely possibility of conflict of interest (example, when faculty participate in study sections run by the Federal government or when providing expert legal medical review or testimony for a law firm) and in such cases failure to complete the data field on role in decision making would not impair the CAO's ability to make a decision on whether to approve the request.

Recommendations:

The Consulting Management Committee should recommend to the CAO:

- 1) In the situation in which a health professional writes/may write prescriptions for a product and is requesting to consult with the maker of such a product or its competitors, the CAO should not automatically disapprove such a request nor automatically require a Col management plan be developed and implemented. Instead, the CAO should use professional judgment on a case by case basis in determining if the request should be denied or if a Col management plan needs to be developed and implemented. Among the warning flags that the request to consult should be denied and/or a Col management plan is necessary are when there is a high level of compensation or when the compensation is in excess of what would be expected for the time and effort spent on the consulting activities.
- 2) In the situation in which the contracting entity is a provider of medical or dental supplies, equipment or pharmaceuticals, the request for consulting may not be approved by the CAO until the faculty member has completely and directly answered the question on the consulting request form related to his/her role in decision making (or influencing decision making) that might impact the contracting entity. At his/her discretion, the CAO may request this data field be completed for other types of contracting entities.
- 3) In the situation in which the contracting entity is a vendor of medical or dental supplies, equipment or pharmaceuticals AND the person requesting to consult serves on a standing purchasing committee making decisions that could impact the contracting entity, the CAO must either deny the request to consult or require a Col management plan as described in item 4 below. The UCHC Faculty Consulting Office should maintain and use as appropriate a list of members of the standing committees that decide (or provide material advice) on what medical and dental supplies, equipment, and pharmaceuticals will be purchased by UCHC.

When the total compensation paid to the faculty member by the contracting entity is \$5,000 or more per year, then the UCHC Office of Faculty Consulting will make the UCHC Director of Purchasing aware of this relationship and ask whether that faculty member is serving on any ad hoc purchasing committees related to that vendor or its competitors. If that faculty member is serving on such committee(s), then either the request to consult will be denied or a Col management plan (as described in item 4 below) must be implemented.

- 4) In the situations described in item 3 above when the CAO elects to assign a Col management plans, it should be one of the following:
 - a. One developed after consulting with the CMC on a case by case basis, or
 - b. The UCHC Faculty Consulting Office will notify the purchasing committee of the consulting engagement and require the person be recused from decisions that could impact the contracting entity or its competitors.
 - c. The UCHC Faculty Consulting Office will notify the purchasing committee of the consulting engagement but not require the person be recused. The purchasing committee may choose to recuse the person following its own policies. This Col management plan may only be used when the total compensation paid to the

faculty member by the contracting entity is less than \$5,000 per year⁴ AND when the level of compensation for consulting is not excessive given the time and effort expended in the consulting activity

CMC Response

On January 31, 2008, the Consulting Management Committee unanimously approved all four of the recommendations as written above. On March 9, 2012, the Consulting Management Committee revised the threshold for Col considerations from \$10,000 to \$5,000.

⁴ The usual threshold used by Federal agencies in determining if a conflict of interest in research exists.
Page 5 of 5