

Consulting Management Committee
UCHC Request for Action #6 – Case of Dr. X¹

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

Problem

Dr. X is a faculty member in a clinical department and also serves as the director of medical information unit. His academic expertise makes him very desirable as an expert witness, medical reviewer and advisor and his time is frequently sought by law firms, commercial companies and governmental agencies.

When Dr. X was hired into his fulltime position in 1991, one expectation in his appointment letter was that he would “generate at least half of your salary costs through contracts and clinical consults.” Such work would be performed as a State employee. The same letter also articulated his right to do similar work as a private citizen as allowed by the Bylaws and policies of the University. At this time and subsequent to that, the polices capped the amount of time he could consult as a private citizen.

Dr. X met the obligations in his appointment letter and subsequently shifted to .80 FTE in order to allow him more time to do consulting as a private citizen. Dr. X did and continues to perform his duties well.

Subsequent to his shift in FTE, an issue was raised as to whether Dr. X was now competing for consulting work that the University was interested in performing. Of particular concern was that he wanted to consult for contracting entities that he had worked for while acting as a State employee and even on the same ongoing issue (i.e. legal cases being adjudicated.) Another concern was whether he was being offered subsequent engagements because of his State position.

In 2005, Dr. Adams, executive director of the UCHC Office of Compliance, established a protocol that required that “your participation in a consult activity with a payer with whom you had previously done work as part of your university job duties must be approved by your department chair.” A template letter was developed to be completed and attached to each of Dr. X’s request forms to consult.

A standard checklist also had to be completed for each request. This checklist prohibited Dr. X from performing consulting work as a private citizen when the contracting entities were “state agencies, departments, persons, and firms”, “patient referrals, including workers’ compensation”, “out-of-state law firms which are solely or primarily for educational, policy

¹ Please note that Dr. X’s situation was initially raised by Dr. Nancy Adams from the Office of Audit, Compliance and Ethics, who also operated the previously UCHC faculty consulting approval process. She wanted the new office to be aware of his special situation. Since she raised this issue, Dr. X has submitted a request to consult, but it was received by the UCHC FCO after the end date of the activity. Since this is already late, no formal approval or denial has been made yet.

development, standard development, etc.”, “Exxon and firms representing them”. In addition the checklist included “area to be clarified” which was a ‘request for consulting on a new case from a firm with which business was previously done as part of job duties as a state employee when an old case is not formally “closed”.

Dr. X’s current department head believes that Dr. X is adequately performing his work. Dr. X is still required to earn half his salary through contracts while working as a State employee. Dr. X’s department chair does not believe that Dr. X is competing for consulting work that the University would wish to have.

My questions on this case are:

- 1) Should the process established in 2005 requiring the standard letter and checklist still apply to Dr. X when he requests to consult?
- 2) What special limitations, if any, should apply to him

Previous Opinion(s) of the Office of State Ethics

In the fall of 2004, Dr. X asked the Office of State Ethics for an opinion concerning his situation. Attorney Regula provided an informal staff opinion dated October 29, 2004. In this letter she acknowledges that the State Code of Ethics does not contain a blanket restriction on outside employment but then reiterates the State rules that apply to consulting, all of which have been discussed with the CMC and are described in our training materials.

The letter also addressed the specific situation in which Dr. X might be working as a State employee for a contracting entity and then be asked to consult for the same contracting entity as a private citizen. She states that it would not be acceptable “to spend university and non-university time on the same matter and accept personal payment for the non-university time.” However, working for the same contracting entity on a different matter may be permissible so long as the other rules concerning consulting are complied with.

Subsequent to this another clarification was requested in 2005 and in Attorney Bergeron’s response dated April 2, 2005, she opines that there are situations in which Dr. X could do consulting work with a contracting entity that he did prior work for as a State employee. However, if the work being performed as a State employee had not as yet concluded it might be argued that his decision making in such a case could be impaired by the subsequent consulting work. This would need to be considered on a case by case basis.

Discussion

The policies and statutes related to consulting have changed considerably since Dr. X was hired in 1991. He consistently appears to be honoring his obligation to earn half his salary on contracts as a State employee, has acceptable performance ratings, and is not viewed by his department head as competing with the University for consulting work that it would want.

The key issues outstanding appears to be: a) whether Dr. X is benefiting from his position as a State employee when being asked to consult in situations in which he conducted prior work for

the same contracting entity, and b) whether Dr. X would have an unacceptable conflict of interest when consulting for a contracting entity while at the same time working under a contract with the same contracting entity as a State employee. Dr. X has developed considerable expertise and experience in handling consulting activities related to his field and it is highly likely this is the reason he is asked to consult and not his State positions. While it could be argued that situations may be problematic when a faculty member is at the same time working as a State employee and not an employee, this is also the case when faculty work on research grants as State employees and then consult with the same contracting entity. Such situations have been described in UCHC Request for Action #3.

Recommendations

- 1) The special rules developed by the Compliance Office for Dr. X's consulting no longer apply.
- 2) In the situation in which Dr. X requests to consult and is simultaneously working on a contract held by the University with the same contracting entity on the same matter, the CAO must deny the request to consult.
- 3) In the situation in which Dr. X requests to consult and is simultaneously working on a contract held by the University with the same contracting entity but on a different matter, the CAO will not automatically deny the request to consult or automatically require a Col management plan. Instead, professional judgment must be used in such situations on a case by case basis. Among the warning flags that the request should be denied or a Col management plan developed and implemented are a high level of compensation or compensation in excess of what would be expected for the time and effort spent on the consulting activities.

Dr. X must provide a written description with his request to consult concerning the work he is performing with the contracting entity as a State employee. Further he must provide such contracting entity with a similar written notification of his current role with them acting as a State employee.

CMC Response

During the week of April 7, 2008, the Consulting Management Committee unanimously approved the recommendation as written above. This vote was taken by email ballot.