

Conflicts of Interest

**How do relationships influence employee,
professional or clinical judgment?**

Howard Hacker

Executive Vice President & Chief Compliance Officer, Tenet Health

October 13, 2021

Disclaimer

Any comment made herein is strictly personal and cannot be considered as a statement from Tenet Health or any of its affiliates, or any other firm or company.

For Any Company

- A “Conflict of Interest” typically means where an employee or other stakeholder is in a position to influence a company business decision that may result in a personal gain for that employee, a relative, or person living in the same household, or otherwise where personal interests may conflict with the company’s best interests
- Conflicts of interest can be actual, potential or perceived conflicts of interest
- In most companies’ codes of conduct, the perception/appearance of a conflict is usually considered a conflict of interest for purposes of needing to obtain review and approval
- Employees have a duty to put the interests of the company before their own; employees are typically asked to avoid Conflicts of Interest where someone might question whether they are acting for the company’s benefit or for personal gain
- Employees typically are asked to identify potential conflicts and disclose them, making them subject to review/approval
- Some companies have policies prohibiting and/or requiring exceptions to specific types of conflicts of interest (eg limits on interactions with vendors, or prohibitions on ownership in any vendor subject to exceptions)
- In most companies, no “presumption of guilt” is created by the mere existence of a real or potential conflict between an employee or other stakeholder and a third party – review/approval processes exist for this purpose

Examples

- Receiving or giving of personal benefits and/or anything of value
- Conducting business with personal friends or relatives on behalf of the company
- Disclosing proprietary information to anyone that is not publicly released
- Trading in securities based on information obtained through employment
- Hiring or contracting with relatives
- Owning an interest in a vendor or potential vendor
- Participating in any activity that may be perceived as being a conflict of interest

Conflicts in Healthcare

- Healthcare is a relational industry: physicians have relationships with patients, with other clinicians, with payors, with hospitals and other healthcare providers, and with industry/service providers, and all those parties have relationships with each other
- The nature of those relationships is critical to effective, efficient, innovative and high quality service delivery
- In healthcare, there may be potential conflicts, for example, for physicians on medical staff at a facility, on formulary or P&T committees, or physician owners of any facility
- There are existing professional and regulatory standards (e.g. AMA guidelines, Anti-Kickback Statute)
- Many employees, managers and especially legal and compliance professionals have questions about what constitutes a conflict and how to handle certain situations

Pharma and Device Relationships

- Many physicians have relationships with companies in the pharma or device industries because it can be critical to working at the leading edge of innovation
- Examples of key regulatory considerations
 - Anti-kickback statute
 - Stark Law
 - OIG fraud alerts and other guidance on physician owned distributorships
- Questions of undue influence on medical judgment are by their nature subjective
 - Questions of medical judgment, standard of care, improvements on the standard of care, stages of medical innovation and bias vs. unconscious bias can be very subjective
 - Note that the Stark Law however is a strict liability statute