

Conflict of Interest Guidelines for Organized Medical Staffs

Office of General Counsel
Organized Medical Staff Section



Organized Medical Staff Conflict of Interest Guidelines¹

Preamble

Conflicts of interests among the members of a hospital's² organized medical staff [OMS] are not completely avoidable. The presence of a conflict of interest is often indicative of the broad experience, accomplishments and diversity of institutional decision-makers. It follows that the goal of any conflict of interest policy should be to identify potential conflicts of interest and manage those conflicts of interest which are actual and material. Nonetheless, the potential consequences of conflicts of interest shall be kept in mind by those charged with making decisions, and, in case of doubt, interests that may potentially lead to a conflict shall be disclosed.

A conflict of interest policy should be prepared with the objective of improving the internal decision-making processes of the OMS. The same conflict of interest policy should apply, and apply equally, to all falling under the policy.

Physician members of a hospital governing body (whether or not members of the OMS) should not be asked to adhere to a different conflict of interest policy than other members of the governing body. Only those OMS members who also serve on a hospital governing body owe a fiduciary duty to the hospital and can properly be required to adhere to the conflict of interest policy, if any, applicable to the members of its governing body. Governing body conflict of interest policies that expressly or in practice apply only to physician members of the body obscure the goal of physician participation in the governing body's deliberations. Conflict of interest disclosures of each member of a hospital governing body should be reviewed with the same level of scrutiny.

Basic Tenets for the Development of an OMS Conflict of Interest Policy

1. The OMS organizes itself for the purpose of overseeing and promoting delivery of quality health care in a hospital. Any conflict of interest shall be measured against this purpose. As a self-governing body, the OMS shall develop a conflict of interest policy applicable to members elected or appointed to various positions on behalf of the OMS. The OMS conflict of interest policy shall appropriately consider and reflect the OMS members' responsibilities in their elected or appointed positions. The OMS organizes itself in conformity with the OMS bylaws, which are contractually binding between the OMS and the hospital.
2. The objective of an OMS conflict of interest policy is to encourage unbiased, responsible OMS management and decision-making.
3. The OMS conflict of interest policy shall extend, and apply uniformly, to all similarly-situated elected or appointed members of the OMS.

¹ Discussion of specific medical staff functions, such as peer review, is beyond the scope of this document. AMA Policy nonetheless holds paramount impartiality in the peer review process (See H-375.987; H-375.984; H-375.997; H-375.996; H-375.990).

² While "hospital" is used throughout, these guidelines may be applied in various types of health care delivery institutions.

4. Denial, dismissal from or restriction of OMS membership and/or privileges based on the existence of financial or personal interest that requires disclosure under the OMS's conflict of interest policy, or based on the existence of a conflict of interest, is never appropriate. Medical staff bylaws shall state that neither the existence of a conflict of interest, nor the disclosure thereof, shall affect OMS membership or privileges. Membership and privileges on the OMS shall be granted, revoked or otherwise restricted or modified based only on the professional training and experience criteria set forth in the OMS bylaws.
5. The OMS conflict of interest policy shall be adopted by the OMS. The OMS conflict of interest policy shall be adopted into the OMS bylaws and shall not be subject to unilateral amendment by either the OMS or hospital governing body.³

Rights and Duties of the OMS Regarding Conflicts of Interest

6. Disclosure obligations shall be limited to individuals elected or appointed to leadership positions serving the OMS (e.g., members of the medical executive committee, institutional review boards and all peer review panels), as determined by the OMS⁴. These individuals have a special responsibility for achieving the OMS's goals.
7. Candidates for election or appointment to leadership positions serving the OMS shall be afforded an opportunity, and have a duty, to disclose any actual or potential interest that a reasonable person would believe may have the potential to create a conflict in representing, advocating for or otherwise serving the OMS. Initial disclosures shall be in writing and signed at the time of candidacy. Subsequent written disclosures shall be required from each leader at the time of re-election or re-appointment, at any change in appointed or elected position or at any material change in the member's interests. Written disclosures of interests, other than those submitted at time of reappointment which show no changes from the prior written disclosure form, shall be submitted to the medical executive committee, and shall be available to any OMS member.

OMS members in leadership positions shall verbally disclose all interests that could potentially constitute a conflict of interest in the course of each OMS meeting or other OMS event where such a disclosure may be relevant to the immediate proceeding. Disclosures of such interests shall be made to the entire OMS body or OMS committee, as appropriate, on which the elected or appointed OMS member sits. Verbal disclosures shall be recorded in the minutes of proceedings, as shall abstentions and recusals based on conflicts of interest.

8. Each disclosed interest shall be assessed by the pertinent OMS body or committee on a case-by-case basis in conformity with the OMS conflict of interest policy.

³ Employed physicians are entitled to all protections included in the OMS bylaws and policies. Physicians considering employment by a hospital should work with counsel to ensure that their employment contract adequately protects their interests. OMS members who are employed by a hospital shall independently observe common law loyalty and other legal duties owed their employer, without sacrifice of their professional autonomy in medical decision making; however, those duties are beyond the focus of these guidelines.

⁴ While certain OMS leaders have clear disclosure obligations due to their position in service of the entire OMS, the OMS must decide to which other leaders disclosure obligations extend. For example, the OMS may determine that those elected or appointed to medical staff office, department or section chair, committee leader or membership, hospital board membership, AMA OMS Section Representative or other OMS leadership position must also disclose.

9. Conflicts of interest are financial and/or personal.

The following “material” **financial interests** should be disclosed under the OMS conflict of interest policy. Depending upon the circumstances and the role of the involved individual, they may give rise to a conflict of interest with the OMS and/or the hospital.

A material financial interest exists when the OMS leader or candidate 1) has an employment, consulting or other financial arrangement with the hospital of the OMS or another hospital or 2) holds an ownership interest of at least 5% in the hospital of the OMS or another hospital, excluding a physician’s individual or group practice or 3) any size ownership interest in an organization providing products or services to the hospital of the OMS or another hospital (including a financial interest in an entity which is engaged in an existing or proposed business relationship with the hospital) or 4) receives more than 5% of his/her annual income from the conflicted financial interest or 5) holds the position of director, trustee, officer or key employee in the hospital of the OMS or another hospital, excluding a physician’s individual or group practice; or an organization providing products or services to the hospital of the OMS or another hospital (including an entity which is engaged in an existing or proposed business relationship with the hospital). All material financial interests must be disclosed by OMS leaders and candidates.

Individually held material financial interests of a spouse, or domestic partner, if known by the leader or candidate, must be disclosed, if material when aggregated. In addition, material financial interests held by the leader or candidate and a parent or child, must also be disclosed.

Personal interests which must be disclosed arise out of the relevant personal activities of an OMS leader or candidate or his/her immediate family members [e.g., pursuit by the affected individual of a claim or litigation against the hospital]⁵. Personal interests shall be disclosed.

In the event a financial or personal conflict of interest is determined to exist, the OMS conflict of interest policy shall specify the appropriate and least disruptive remedial action available in order to preserve, to the maximum extent feasible, the ability of a involved individual to carry out the responsibilities of the leadership role to which his/her has been elected or appointed, as follows:

- I. Remedial Measures for Conflicts of Interest.** (1) In order of increasing severity, a conflict of interest shall result in one or more of the following. The leader’s:
- (a) Disclosure of the conflict of interest;
 - (b) Abstention from voting on the matter to which the conflict relates; and
 - (c) Recusal from the decision-making process and participation in, including the receipt of information related to, the matter to which the conflict relates;
- (2) If information is not to be disclosed on a “going forward” basis to the recused member based on the existence of a conflict of interest, the member shall be informed of the fact he/she is not receiving information related to the matter to which the conflict relates.

⁵ Additional examples of potential personal conflicts of interest include the following: religious (e.g., a Catholic hospital’s requirement that all physicians be Catholic), environmental (e.g., a hospital’s expansion plans which conflict with a neighborhood preservation group of which a physician leader is a member) or political (e.g., the agenda of a physician-public office holder that may conflict with a hospital’s business or other goals).

II. Involuntary Recusal for Conflicts of Interest. (a) Where a involved individual has failed to voluntarily disclose a potential conflict of interest, to abstain from voting, or recuse himself/herself, from the decision-making process and/or participation, and two-thirds of the OMS committee or body of which the involved individual is a member determines that the involved individual should not participate in the matter at hand, the involved member shall thereupon be disqualified from any further participation in a specific matter, so long as the matter remains under consideration.

(b) Votes to involuntarily recuse an involved individual may be based upon information obtained through disclosure by the involved individual or credible information provided by others.

(c) Before a vote is taken on whether involuntary recusal is appropriate, the involved individual shall be notified of this possibility and permitted an opportunity to explain to the OMS committee or body why he/she should be allowed to participate in the matter at hand.

(2) Where an involuntary recused individual holds his/her position as a representative of a specific department (i.e., an “ex-officio” or a “slotted seat”) and the medical staff bylaws or policies do not provide a process for replacement, the department electing or appointing that member shall be permitted to elect or appoint, in a time-expedient fashion, an alternate free of a conflict for the duration of the consideration of the matter to which the conflict relates.

10. Under no circumstances shall the existence of a conflict of interest or a recusal (whether or not voluntary) result in dismissal from or forfeiture of an elected or appointed OMS leadership position without action to this effect provided for in the medical staff bylaws by the person or group electing or appointing that member.

In developing a conflict of interest policy with the assistance of competent counsel, an OMS should adapt these guidelines to fit its needs and comply with all governing law.

[Sample OMS Leaders' Interest Disclosure Form]
OMS Leadership Candidates' Disclosure of Interests and Statement of Compliance with the
[Insert Entity's] OMS
Conflict of Interest Policy

The attached [insert name of organized medical staff] ("OMS") Conflict of Interest Policy requires each [include all elected and appointed positions serving the OMS that the OMS determines must disclose] to disclose in writing upon candidacy/election or appointment his or her material financial and personal interests, and to execute a statement confirming, to his or her knowledge, compliance with the OMS Conflict of Interest Policy.

Conflicts of interest are not completely avoidable. The presence of outside interests, even a conflict of interest, is often indicative of the broad experience, accomplishments and diversity of institutional decision-makers. It follows that the goal of an OMS conflict of interest policy is to identify potential conflicts of interest and manage those conflicts of interest which are actual and material. Nonetheless, the potential consequences of conflicts of interest shall be kept in mind by those charged with making decisions, and, in case of doubt, interests that may potentially lead to a conflict shall be disclosed.

Written disclosure of potential conflict of interest shall be made at the earliest appropriate time, and, specifically, prior to each election or appointment to a leadership position serving the OMS. OMS leaders have an obligation to verbally disclose potential and actual conflicts of interest as appropriate for the remainder of their term thereafter.

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"Material financial interest" means:

- an employment, consulting or other financial arrangement, or
- an ownership interest of more than 5%, or
- an interest which contributes more than 5% to your annual income, or
- a position as director, trustee, managing partner, officer or key employee.

Individually held financial interests of a spouse, or domestic partner, if known by the leader or candidate, must be disclosed, if material when aggregated. In addition, material financial interests held by the leader or candidate and a parent or child, must also be disclosed.

"Personal interest" means those interests that arise out of your relevant personal activities, or the personal activities of your immediate family.

* * * * *

1. Do you/your spouse/domestic partner individually, or do you and your child/parent, have a material financial interest in (i) the [insert name of the hospital of the OMS], including its subsidiaries and affiliates (collectively, "Entity") (ii) another hospital, but excluding your individual or group practice or (iii) any organization providing products or services to or which is engaged in an existing or proposed business relationship with the Entity or another hospital?

No: _____
Yes: _____

If yes, please specify in detail.

2. Do you or an immediate family member have a personal interest related to the Entity?

No: _____
Yes: _____

If yes, please specify in detail.

3. Are you involved in any other relationship, activity or interest which may raise a conflict of interest or impair your objectivity to fairly consider or implement the OMS's bylaws or policies or otherwise fulfill your elected/appointed role on behalf of the OMS?

No: _____
Yes: _____

If yes, please describe each relationship, activity or interest in detail.

Statement of Compliance with the Conflict of Interest Policy

I understand that I am expected to comply with the Conflict of Interest Policy of the [insert name of organized medical staff]. To my knowledge and belief, I am in compliance with the Conflict of Interest Policy and have disclosed my material financial and any personal interests. I understand that I have a continuing responsibility to comply with the Conflict of Interest Policy, and I will promptly disclose any changes required to be disclosed under the Policy.

Signature _____

Print Name _____

Position _____

Date _____