

AMERICAN MEDICAL ASSOCIATION ORGANIZED MEDICAL STAFF SECTION

Resolution: 7
(A-24)

Introduced by: Vimal I. Nanavati, MD

Subject: The Role of Contracted Physicians on the Medical Executive Committee

Referred to: OMSS Reference Committee
(xxxx, MD, Chair)

1 Whereas, in many hospitals, physicians who are under contract, such as members of
2 departments like Pathology, Radiology, and Anesthesiology, also have been elected to positions
3 of medical staff leadership; and
4

5 Whereas, this represents a potential conflict of interest since the interests of the medical staff
6 can be divergent from that of the hospital administration; and
7

8 Whereas, the Chief of Staff and Medical Executive Committee are often called upon to make
9 judgments on the privileges of members of their own medical staff via processes like judicial
10 review; and
11

12 Whereas, there is no current existing legislation which requires that candidates for medical staff
13 office provide written disclosure of any potential conflict of interest, such as financial links to the
14 hospital administration; therefore be it
15

16 Resolved, that our American Medical Association encourage that hospital medical staff bylaws
17 require that all physicians who run for medical staff elected offices must submit a disclosure
18 statement that clearly identifies any potential conflicts of interest between duties as a contracted
19 physician for the hospital and those of an elected medical staff officer (Directive to Take Action);
20 and be it further
21

22 Resolved, that our AMA encourage that hospital medical staff bylaws require that physicians
23 seeking to run for medical staff elected office must disclose their paid contractual relationship
24 with the hospital during the campaign period and well in advance of an election with the conflict
25 disclosed on the ballot itself (Directive to Take Action); and be it further
26

27 Resolved, that our AMA encourage that hospital medical staff bylaws require that any physician
28 on the medical executive committee (MEC) must recuse if there is a conflict of interest involving
29 another medical staff during any discussions of privileges or any other matter pertaining to the
30 physician under scrutiny by the MEC (Directive to Take Action); and be it further
31

32 Resolved, that our AMA encourage that hospital medical staff bylaws require that the contracted
33 physician be afforded the same rights to continue on medical executive committee (MEC)
34 leadership as any other member of the MEC even if the contract with the hospital is cancelled or
35 terminated as long as the physician remains in good standing on the active medical staff
36 (Directive to Take Action); and be it further
37

38 Resolved, that this resolution be incorporated into the AMA Medical Staff Bylaws (Directive to
39 Take Action).

Fiscal Note: TBD

Received: 4/29/2024

RELEVANT AMA POLICY

Conflict of Interest Issues and Medical Staff Leaders H-235.970

Our AMA encourages medical staffs to adopt and incorporate into their bylaws medical staff conflict of interest policies that reflect the following principles:

1. Disclosure of potential conflicts. Candidates for election or appointment to medical staff leadership positions should disclose in writing to the medical staff, prior to the date of election or appointment, any personal, professional or financial affiliations or relationships of which they are reasonably aware, including employment or contractual relationships, which could foreseeably result in a conflict of interest with their acting on behalf of the medical staff. Elected or appointed medical staff leaders should disclose potential conflicts in writing to the medical staff whenever they arise.
2. Management of conflicts. When conflicts of interest exist, elected or appointed medical staff leaders should, as appropriate, recuse themselves from the deliberative process and/or abstain from voting on the matter to which the conflict relates. The medical staff should establish a process for disqualification from the deliberative process and/or from voting on the matter at hand for any elected or appointed medical staff leader with an identified conflict who fails to disclose the interest or who fails to recuse himself or herself from the deliberative process and/or from voting on the matter to which the conflict relates, as appropriate.

Citation: Sub. Res. 801, A-95; Reaffirmed: CLRPD Rep. 1, A-05; Modified: BOT Rep. 29, A-13; Reaffirmed: A-16

Physician's Guide to Medical Staff Organization Bylaws, Seventh Edition—Appendix E: AMA Conflict of Interest Guidelines for the Organized Medical Staff

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.

¹ These Guidelines were adopted at the 2005 Interim Meeting of the AMA Organized Medical Staff Section and revised in October 2007 and May 2015.

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

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.

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

- I. 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 leadership 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.
- II. The objective of an OMS conflict of interest policy is to encourage unbiased, responsible OMS management and decision-making.
- III. The OMS conflict of interest policy shall extend, and apply uniformly, to all similarly situated elected or appointed members of the OMS.
- IV. It is never appropriate to deny, restrict or rescind OMS membership and/or privileges based on the existence of personal or financial affiliations, or relationships of which the individual is reasonably aware, including employment or contractual relationships, which could foreseeably result in a conflict of interest, that require disclosure under the OMS's conflict of interest policy. 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.
- V. 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

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.

Rights and Duties of the OMS Regarding Conflicts of Interest

- VI. 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.
- VII. 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 personal or financial affiliations or relationships of which the individual is reasonably aware, including employment or contractual relationships, 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. All personal proprietary information shall be kept confidential and only used for conflict of OMS conflict of interest purposes in connection with their OMS leadership position.

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.

- VIII. 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.

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 Organized Medical Staff Section Representative or other OMS leadership position must also disclose.

IX. 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, contractual, 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 personal or financial 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 an involved individual to carry out the responsibilities of the leadership role to which he/she has been elected or appointed, as follows:

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).

A. 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.

B. Involuntary Recusal for Conflicts of Interest.

1. Where an involved individual has failed to voluntarily disclose a potential conflict of interest, to abstain from voting, or recuse himself/herself from the participation decision-making process, 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.
 - a. 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.
 - b. 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 involuntarily 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.

- X. 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.