

# NYU LANGONE MEDICAL CENTER

## POLICY ON CONFLICTS OF INTEREST IN BUSINESS AFFAIRS

Issue Date: April 1, 2009

Reissue Date: July 1, 2014

---

### Contents:

- I. Applicability
  - II. General Policy
  - III. Procedures for Disclosure
  - IV. Review and Evaluation
  - V. Recusal
  - VI. Definitions
  - VII. Examples of Conflicts of Interest
  - VIII. Enforcement
  - IX. Questions
  - X. Relationship to Other Policies
- 

### I. Applicability

This Policy applies to all members of the Medical Center community -- employees, faculty, staff, residents, trainees, students, and Key Employees (each, an “NYULMC Member”) -- except Trustees, who are governed by the *Policy on Trustee Conflicts of Interest*. All capitalized terms shall have the meaning set forth in Section VI below.

### II. General Policy

A. NYULMC Members have a primary obligation to serve the purposes to which the Medical Center is dedicated. As part of this obligation, each NYULMC Member has a duty to conduct his or her Medical Center duties and the affairs of the Medical Center in a manner that promotes the best interests of the organization and in compliance with legal and regulatory requirements. NYULMC Members have a duty to disclose on an ongoing basis any current, proposed or pending situations that may give rise to a Conflict of Interest.

B. A “**Conflict of Interest**” means any circumstance in which the personal, professional, financial, or other interests of an NYULMC Member (including his or her Immediate Family) may potentially or actually diverge from, or may be reasonably perceived as potentially or actually diverging from, his or her obligations to the Medical Center and the interests of the Medical Center. A Conflict of Interest may exist whenever an independent observer might reasonably question whether the NYULMC Member’s actions or decisions are determined by considerations of personal benefit, whether financial or otherwise. A Conflict of Interest also may exist whenever an NYULMC Member participates, directly or indirectly, in the selection, award or administration of any business transaction which involves the Medical Center and the NYULMC Member, a member of his or her Immediate Family, or an entity in which he or she has a Financial Interest. Employment agreements between the Medical Center and the NYULMC Member are not business transactions giving rise to Conflicts of Interest under this Policy. Examples of Conflicts of Interest are set forth in Section VII below.

C. The Medical Center does not engage in any matter giving rise to a potential Conflict of Interest involving an NYULMC Member unless the matter has been fully disclosed and evaluated in accordance with this Policy and a plan for managing or eliminating the Conflict of Interest has been adopted.

D. This Policy applies to any circumstance that may constitute a Conflict of Interest, regardless of whether it is specifically described in this Policy. For example, while a NYULMC Member's Financial Interests are defined to include current interests as well as interests held in the preceding twelve (12) months, there also may be situations where far older interests create an actual or perceived Conflict of Interest.

### III. **Procedures for Disclosure**

A. **Annual Disclosures.** The following NYULMC Members must submit to the Office of Internal Audit, Compliance & Enterprise Risk Management's Conflicts of Interest Management Unit ("CIMU") his or her disclosure forms upon appointment, hiring and annually thereafter:

- (i) Chairs, Vice-Chairs, Department Administrators, and all employees and officers at the level of Vice-President, Assistant Dean or Director or above;
- (ii) Full-time faculty members and part time employed faculty members;
- (iii) Investigators participating in the Medical Center's research or sponsored programs;
- (iv) Persons engaged in purchasing decisions on behalf of the Medical Center; and
- (v) NYULMC Members of any Medical Center committees with supervision or oversight responsibilities over patient care, purchasing, research or education at the Medical Center (e.g., the Pharmacy and Therapeutic Committee (P&T) and the Institutional Review Board (IRB)).

The annual disclosure form will be provided electronically to the NYULMC Member by the CIMU and must be completed and submitted within thirty (30) days of receipt. In addition, the CIMU may request any NYULMC Member to complete an annual disclosure form at any time.

In the annual disclosure form, an NYULMC Member must, among other matters, certify compliance with the Medical Center's *Policies on Conflicts of Interest, Commitment and Consulting*, including this Policy, and disclose all entities in which he or she has a Financial Interest which he or she reasonably believes provides or seeks to develop goods and/or services to healthcare providers, does business with or seeks to do business with the Medical Center, donates or may donate funds to the Medical Center, competes with or could potential compete with the Medical Center in the areas of clinical care, research and development, or faculty, student, trainee or employee recruitment, or could reasonably appear to be related to the NYULMC Member's responsibilities (teaching, clinical, research, administrative or otherwise) with the Medical Center. Disclosures of Financial Interests must be made in specific amounts. In addition, as provided in the Medical Center's *Policies on Conflicts of Interest, Commitment and Consulting*, faculty members must disclose all outside activities involving his or her professional competence. NYULMC Members may also be required to disclose additional personal interests, activities and relationships as mandated by regulatory requirements (e.g., IRS Form 990).

B. Specific Disclosures. All NYULMC Members have an ongoing obligation throughout the year to disclose new and anticipated Conflicts of Interests. All NYULMC Members must disclose to the CIMU any specific situation that gives rise to a potential Conflict of Interest.

C. Confidentiality. Disclosures will be kept confidential and divulged by the Medical Center for review under the *Policies on Conflicts of Interest, Commitment and Consulting* on a need-to-know basis or as required by applicable laws and regulations.

#### IV. Review and Evaluation

A. CIMU Review. The CIMU is responsible for reviewing and evaluating each disclosure made by an NYULMC member and for determining whether a potential Conflict of Interest exists under the circumstances. In cases where the CIMU believes that a significant potential Conflict of Interest exists and/or the disclosure involves the Financial Interest of a Key Employee, the CIMU will submit the matter to the Medical Center's Business Conflict of Interest Committee ("BCOIC"). The CIMU will determine whether a significant potential Conflict of Interest exists based upon directions provided to the CIMU by the BCOIC from time to time and upon the best interests of the Medical Center.

For all other matters, the CIMU will evaluate the matter to determine if the potential for a Conflict of Interests exists, and, if so, how such potential Conflict of Interest may be managed, reduced or eliminated. When appropriate, the CIMU may adopt and issue to NYULMC Members a plan for managing and monitoring any potential Conflict of Interest. Such plans will depend upon the facts and circumstances of the specific matter and will be consistent with this Policy and the directions of the BCOIC. Each affected NYULMC Member must review and sign the conflict management plan and comply with all of its terms.

B. BCOIC Review. The BCOIC is responsible for reviewing and evaluating each potential Conflict of Interest submitted to it by the CIMU. As a matter of policy, if the BCOIC finds that a Conflict of Interest exists, the Medical Center will not approve the matter unless the BCOIC determines, after reviewing all material facts, that extraordinary circumstances merit an exception and the BCOIC adopts a plan for managing and monitoring the Conflict of Interest which is fair, reasonable, and in the best interests of the Medical Center. Any management plan will depend upon the facts and circumstances of the specific matter. Each affected NYULMC Member must review and sign the conflict management plan and comply with all of its terms.

C. Related Party Transactions. The BCOIC and the CIMU must report to the Audit and Compliance Committee of the Board of Trustees ("Audit and Compliance Committee") any applicable findings the BCOIC makes with respect to Related Party Transactions arising from its review and evaluation responsibilities under this Policy.

The Audit and Compliance Committee is responsible for reviewing and evaluating each Related Party Transaction submitted to it by the BCOIC. As a matter of policy, the Medical Center will not approve a Related Party Transaction unless it was reviewed by the BCOIC and the Audit and Compliance Committee makes a determination that the Related Party Transaction is fair, reasonable, and in the Medical Center's best interests. In addition, where a Related Party has a substantial financial interest, the Audit and Compliance Committee must, prior to the Medical Center entering into the transaction, (1) consider alternatives to the transaction to the extent available; (2) approve the transaction by not less than a majority vote of the Audit and Compliance Committee members present at the meeting; and (3) contemporaneously document in writing the basis for the Audit and Compliance Committee's approval, including its consideration of alternative transactions. Any management plan will depend upon the facts and circumstances of the specific matter. Each affected NYULMC Member must review and sign the conflict management plan and comply with all of its terms.

The Audit and Compliance Committee must report to the Board of Trustees all findings it makes arising from its review and evaluation responsibilities under this Policy.

D. Monitoring. The CIMU is responsible for periodically monitoring compliance with every plan for managing and monitoring a Conflict of Interest or potential Conflict of Interest issued under this Policy.

## V. Recusal

No NYULMC Member shall participate, directly or indirectly, in the selection, award, or administration of any matter that gives rise to a potential Conflict of Interest. In such event, the NYULMC Member must not attempt to influence improperly NYULMC's deliberation, decision-making or voting on the matter, must completely recuse himself or herself from the matter, and must notify the CIMU as provided in Section III(B) above.

## VI. Definitions

A. "**Conflict of Interest**" shall have the meaning ascribed to it in Section II(B) above.

B. A "**Financial Interest**" is held in an outside entity by an NYULMC Member when he or she or a member of his or her Immediate Family holds a Financial Interest in the outside entity. Examples of Financial Interests are a Management, Board, or Employment Position, Ownership Interests, Consulting Compensation or Royalty Income, where:

- (i) "**Management, Board, or Employment Position**" means a position or appointment to serve, in either a personal or representative capacity, as a director, trustee, partner, senior executive, officer, or employee, whether paid or unpaid, at the outside entity;
- (ii) "**Ownership Interests**" are equity interests held, either directly or indirectly, including stock and stock options (or entitlement to the same), of any amount in either a publicly-traded or non-publicly-traded entity. (*Exception: Mutual Funds*– Interests of any amount in publicly-traded, diversified mutual funds are not Ownership Interests.);
- (iii) "**Consulting Compensation**" means consulting fees, honoraria, lecture fees, other emoluments, stock, stock options, royalties or "in kind" compensation directly or indirectly received from an entity (or entitlement to the same), whether for consulting, lecturing, or service on a scientific advisory board, data safety monitoring board, steering committee for a clinical trial, executive committee for a clinical trial, or other committee for an outside entity, or for any other purpose, that have been received in the past calendar year or are expected to be received in the next calendar year; and
- (iv) "**Royalty Income**" means royalty income (i.e., payments linked to product sales), or the written contractual right to receive future royalties, directly or indirectly under an issued or pending patent, license or copyright, that has been received in the past calendar year or is expected to be received in the next calendar year. For the purpose of this Policy, Royalty Income includes all income received by an NYULMC Member from NYU in accordance with the *NYU Statement of Policy on Intellectual Property*.

(*Exception: Salary from the Medical Center and cost-related payments for services or reimbursements from the Medical Center are not Financial Interests. Payments to the Medical Center, or via the Medical*

Center to the NYULMC Member, which are directly related to the reasonable costs incurred in the conduct of a research project or sponsored program or to the payment of indirect costs and are specified in a grant, agreement or contract between the Medical Center and a research sponsor are not Financial Interests.)

A Financial Interest is also held in an outside entity whenever a Key Employee is a Related Party.

C. **“Immediate Family”** means the person’s spouse, ancestors, domestic partner, children (whether natural or adopted), parents, grandchildren and great-grandchildren, siblings, or equivalents by marriage, or other individuals residing in the person’s household.

D. **“Key Employee”** means any person who is in a position to exercise substantial influence over the affairs of the Medical Center, as defined in 26 U.S.C. § 4958(F)(1)(A) and 26 CFR § 53.4958-3(c), (d), and (e), including but not limited to the executive leadership of the Medical Center as defined from time to time by the Dean and CEO of the Medical Center.

E. An **“NYULMC Member”** means each member of the Medical Center community, including employees, faculty, staff, residents, trainees, students, and Key Employees, other than trustees.

F. **“Related Party”** means a Key Employee, or a member of his or her Immediate Family, or any entity in which a Key Employee or a member of his or her Immediate Family, has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent.

G. **“Related Party Transaction”** means any transaction, agreement or any other arrangement in which a Key Employee, or a member of his or her Immediate Family, is a Related Party and in which the Medical Center or any affiliate thereof is a participant, as such definition may be interpreted by the New York State Attorney General’s Office.

## VII. **Examples of Conflicts of Interest**

The following are situations that give rise to a Conflict of Interest and require disclosure to the CIMU in accordance with this Policy. This list is by no means all-inclusive. In case of uncertainty as to whether or not a Conflict of Interest exists, an NYULMC Member should disclose the matter to the CIMU. For example, some potential Conflicts of Interest occur when:

A. An NYULMC Member or a member of his or her Immediate Family has a Financial Interest in an entity or vendor that the Medical Center is contemplating doing business with (e.g., the Medical Center is contemplating purchasing, leasing or selling of goods, services, or real estate, or making or receiving a loan to or from such individual or entity, or is contemplating accepting a grant from such individual or entity for sponsored research).

B. An NYULMC Member or a member of his or her Immediate Family proposes that the Medical Center use or purchase goods in which the NYULMC Member has a proprietary interest (e.g., an NYULMC Member advocates the use of a device designed by the NYULMC Member).

C. An NYULMC Member, a member of his or her Immediate Family, or any entity in which he or she has a Financial Interest either engages in competition with a service provided by the Medical Center (e.g., by working for an organization which competes directly with the Medical Center, except that a member of the Medical Center’s medical staff who is also on the medical staff of another hospital does

not constitute competition so long as the second appointment is not prohibited by his or her employment contract).

D. An NYULMC Member, a member of his or her Immediate Family, or any entity in which he or she has a Financial Interest recruits any Medical Center faculty member or employee or solicit business which knowingly disturbs, or could be expected to disturb, the existing professional or business relationships of the Medical Center with any faculty member, employee, health care provider or referral source.

E. An NYULMC Member proposes that the Medical Center hire or contract with a member of his or her Immediate Family for a position or activity that is within his or her direct or indirect supervision or control. The employment of a member of an NYULMC Member's Immediate Family with the Medical Center must be in accordance with NYU's *Policy on the Employment of Members of the Same Family*.

F. An NYULMC Member solicits or accepts a gift, favor or anything of monetary value from a contractor, vendor, patient, co-worker, volunteer or other person with whom the Medical Center has a business relationship, except as specifically provided in the Medical Center's *Policy on Acceptance and/or Solicitation of Gifts or Benefits From Vendors, Patients and Others*.

G. An NYULMC Member uses assets, property or labor of the Medical Center to his or her personal advantage.

H. An NYULMC Member discloses or uses any non-public information obtained in the course of discharging his or her duties and responsibilities at the Medical Center to his or her personal advantage.

I. An NYULMC Key Employee or a member of his or her family is the controlling owner of a company with which the Medical Center is considering engaging in a Related Party Transaction.

J. An NYULMC Member is an inventor on patents or other IP Rights held by NYU and licensed to a start-up company, and receives an inventor's share to any NYU licensing or royalty income and any equity NYU receives from the start-up company through licensing.

## VIII. **Enforcement**

A. Violations of this Policy are subject to disciplinary action, up to and including termination of employment or association with the Medical Center, in accordance with the Medical Center disciplinary policies and procedures applicable to the respective NYULMC Member.

B. Any failure to make a disclosure as required under this Policy by any members of a Medical Center committee will result in the member being suspended or removed from such committee.

## IX. **Questions**

Any questions relating to this Policy should be directed to the Office of Legal Counsel or the CIMU.

## X. **Relationship to Other Policies**

A. This Policy and the *Policy on Trustee Conflicts of Interest* replaced the *Medical Center Conflict of Interest Policy* dated March 18, 2004. This Policy was originally issued on April 1, 2009 and was updated on April 1, 2011.

B. This Policy is intended to supplement, but not replace, other policies and guidelines applicable to the NYULMC Member, including the conflict policies set forth in the NYU Faculty Handbook and elsewhere in the Medical Center's *Policies on Conflicts of Interest, Commitment and, Consulting*.

C. A matter involving an NYULMC Member's participation in research is also reviewed under the Medical Center's *Policy on Conflicts of Interest in Research and Sponsored Programs*.