



Policy on Faculty Consulting

Issuing Department:
Administration

Effective Date: April 1, 2009
Last Update: December 31, 2019

Contents:

- I. Applicability
- II. General Policy
- III. Disclosure
- IV. Review and Evaluation
- V. Conflicts of Interest and Commitment
- VI. Use of NYU and NYU Langone Health Resources
- VII. Inventions and Faculty Consulting Agreements
- VIII. Conflicts of Interest in Research and Sponsored Programs
- IX. No Liability Protection Afforded by NYU or NYU Langone Health
- X. Definitions
- XI. Enforcement
- XII. Administration
- XIII. Relationship to Other Policies
- XIV. Attachments

I. Applicability

This Policy applies to all faculty members of NYU Grossman School of Medicine and NYU Long Island School of Medicine (“Faculty Members”).

II. General Policy

A Faculty Member may use his or her professional competence to engage in consulting and other external activities (including lecturing, acting as an expert witness, public service, service on a professional board or committee) as long as such activities avoid Conflicts of Commitment and Conflicts of Interest. A “**Conflict of Commitment**” occurs when external activities undermine the Faculty Member’s primary professional commitment of time and intellectual energies to NYU Langone Health’s teaching, research and clinical programs. A “**Conflict of Interest**” exists when external activities influence or appear to influence a Faculty Member’s ability to promote objectively the best interests of NYU Langone Health. A Consulting or other external activity which does not comply with this Policy results in a Conflict of Commitment or Conflict of Interest.

III. Disclosure

A. General. As required under NYU Langone Health’s *Policy on Conflicts of Interest in Business Affairs*, a Faculty Member shall disclose in their annual disclosure submission all outside activities involving his or her professional competence and shall certify compliance with NYU Langone Health’s *Policies on Conflicts of Interest, Commitment and Consulting*. Such disclosure shall include all Consulting and other external activities, including the entity(ies) for which such activities are to be performed and the nature, scope, duration and compensation for such activities. Disclosure submissions are required upon appointment, upon request of the Conflicts of Interest Management Unit (CIMU) of the Office of

Internal Audit, Compliance, and Enterprise Risk Management (IACERM) and annually thereafter. A Faculty Member must also disclose specific situation giving rise to a potential Conflict of Interest between their personal interests and their NYU Langone Health responsibilities. NYU Langone Health's procedures for the review and evaluation of such disclosures and potential Conflicts of Interest arising therefrom are set forth in the *Policy on Conflicts of Interest in Business Affairs*.

B. Research and Sponsored Programs. In the event a Faculty Member participates in research or sponsored programs, the Faculty Member shall submit an investigator financial interest disclosure form as provided in NYU Langone Health's *Policy on Conflicts of Interest in Research and Sponsored Programs*. NYU Langone Health's procedures for the review and evaluation of such disclosures are set forth therein.

C. Confidentiality. All disclosures will be kept confidential and disclosed only on a need-to-know basis as required to perform the reviews and evaluations required by this Policy and the *Policies on Conflicts of Interest, Commitment and Consulting*.

IV. **Review and Evaluation**

A. Under the *Policy on Conflicts of Interest in Business Affairs* and *Policy on Faculty Conflicts of Commitment*, the CIMU is responsible for collecting each disclosure received from Faculty Members.

B. In cases where the CIMU believes that a potential Conflict of Interest exists, the CIMU will submit the matter to the Business Conflict of Interest Committee.

C. In cases where the CIMU believes that a potential Conflict of Commitment exists, the CIMU will submit the matter to the Faculty Member's Department Chair and to NYU Langone Health's Chief Academic Officer. A Conflict of Commitment may exist whenever a Faculty Member discloses receipt in the last year, or has expectations to receive in the next year, compensation from Consulting or other external activities (i.e., consulting fees, honoraria, lecture fees, other emoluments, stock, stock options, royalties or "in-kind" compensation directly or indirectly) either (i) in excess of \$50,000 from any individual entity or (ii) in excess of an aggregate of \$100,000 from all outside entities. Prior to such submission, the CIMU will request the Faculty Member to certify that the external activity(ies) is consistent with this Policy and NYU Langone Health's *Policy on Conflicts of Commitment*, including specifically that the activities do not exceed an average of one day per seven-day week (or the equivalent of an eight-hour work day) as contemplated below.

D. The Chief Academic Officer, in conference with the Faculty Member's Department Chair, is responsible for reviewing and evaluating each potential Conflict of Commitment involving a Faculty Member submitted by the CIMU. The Chief Academic Officer may refer matters under this Policy to the Business Conflict of Interest Committee (BCOIC) or to individual members of the BCOIC for an advisory opinion.

E. Except where the Policy explicitly provides for review by the Dean and CEO of NYU Langone Health or his or her designee, decisions of the Chief Academic Officer are final.

V. **Conflicts of Interest and Commitment**

A Faculty Member's participation in outside Consulting must be consistent with the Faculty Member's obligations under the *Policy on Conflicts of Interest in Business Affairs* and the *Policy on Faculty Conflicts of Commitment*. Accordingly, all full-time Faculty Members who engage in Consulting or other external activities are subject to the following:

A. Faculty Members have a primary obligation to serve the purposes to which NYU Langone Health is dedicated. As part of this obligation, each Faculty Member has a duty to organize his or her personal

interests or activities to avoid the appearance that such personal interests or activities are influencing his or her ability to promote objectively the best interests of NYU Langone Health.

B. Full-time Faculty Members are permitted to spend no more than an average of one day per seven-day week (or the equivalent of an eight-hour work day) on outside Consulting activities during any period in which they are receiving full-time compensation from NYU Langone Health. Exceptions are rare (and usually time limited where granted) and may be made on with the prior written approval of the Chief Academic Officer and the Dean and CEO of NYU Langone Health or his or her designee.

C. Full-time Faculty Members are ordinarily not permitted to hold an executive or managerial position in public or private entities outside of NYU and NYU Langone Health. Exceptions are rare (and usually time limited where granted) and may be made on with the prior written approval of the Chief Academic Officer and the Dean and CEO of NYU Langone Health or his or her designee.

VI. **Use of NYU and NYU Langone Health Resources**

Faculty Members may not use any NYU or NYU Langone Health resources, including facilities, personnel, equipment, or other resources, except in a purely incidental way, as part of or in connection with their outside Consulting activities. Personal use may not adversely affect work performance nor add more than a negligible amount to the cost of these resources for NYU Langone Health. All such incidental or other personal use must be in accordance with the *Policies on Conflicts of Interest, Commitment and Consulting* and all other applicable NYU and NYU Langone Health policies. In particular, Faculty Members may not use NYU and NYU Langone Health students, fellows, trainees, postdoctoral appointees, and staff in any tasks that relate to the Faculty Member's Consulting activities or for potential or real financial gain, without full disclosure and approval.

Inappropriate uses of NYU and NYU Langone Health resources by Faculty Members also include, but are not limited to, the following:

- (a) Any use of NYU or NYU Langone Health funding as part of or in connection with their Consulting activities (use of funding is never permitted and never considered purely incidental);
- (b) Any use of NYU or NYU Langone Health confidential information (including all information acquired while conducting NYU or NYU Langone Health business or research activities; see more complete definition below) as part of or in connection with their Consulting activities (use of confidential information is never permitted and never considered purely incidental);
- (c) Any use of the NYU or NYU Langone Health name, or any NYU or NYU Langone Health mark, symbol or logo as part of or in connection with their Consulting activities;
- (d) Granting an outside entity access to other NYU or NYU Langone Health resources including research results, materials or products generated from NYU or NYU Langone Health teaching, research or clinical activities; and
- (e) Offering inappropriate inducements to outside entities in an attempt to unduly influence them in their dealings with NYU or NYU Langone Health.

For purposes of this policy, NYU Langone Health confidential information includes, but is not limited to: medical, personnel, security, academic, background check, conflict of interest, identifiable biometric records and other non-public information about individuals; business records; contracts and business terms; business and donor relationships; computer system passwords and security codes; proprietary and competitively sensitive information, including non-public information about anticipated material requirements, price

actions, programs, and selection of contractors and subcontractors in advance of official announcements; unpublished grant proposals, non-public research data, manuscripts and correspondence; non-public financial, procurement, health-safety, audit, insurance and claims information; and non-public information relating to internal investigations, pre-litigation and litigation and administrative agency charges, audits and inquiries; and other information whose confidentiality is protected by law or NYU's or NYU Langone Health's policies.

VII. **Inventions and Faculty Consulting Agreement**

A. The NYU Policy on Intellectual Property provides that (i) Faculty Member inventors must disclose on a timely basis the creation or discovery of all potentially patentable inventions created or discovered in the course of their NYU and NYU Langone Health activities or with more than incidental use of NYU or NYU Langone Health resources, (ii) ownership of such inventions must be assigned to NYU regardless of the source of funding, and (iii) Faculty Member inventors will share in royalties earned by NYU.

B. Prior to beginning any outside Consulting activity, a Faculty Member must inform the party for whom the Consulting activities are to be performed of the *NYU Statement of Policy on Intellectual Property*, this Policy and the *Policies on Conflicts of Interest, Commitment and Consulting*, and the Faculty Member's obligations under such policies.

C. Faculty Members are responsible for ensuring that Consulting agreements are compliant with all applicable obligations set forth in this Policy. It is strongly encouraged that consulting agreements between the Faculty Member and the party for whom consulting activities are to be performed recognize NYU's rights priority under such policies to the extent they apply. To ensure such rights are protected, Faculty Members are strongly encouraged to use the NYU Langone Health Faculty Consulting Agreement Addendum set forth in Attachment I to this Policy. In the event a Faculty Member has questions regarding the intellectual property provisions of a consulting agreement, the Faculty Member should address the question to the Office of Industrial Liaison or the CIMU.

VIII. **Conflicts of Interest in Research and Sponsored Programs**

Faculty Members may not either (a) receive funds for NYU Langone Health research from a party for whom the consulting activities are being performed or (b) engage in Consulting or other external activities for a party from whom funds are to be received for the Faculty Member's research, without prior disclosure, review and approval as required by NYU Langone Health's *Policy on Conflicts of Interest in Research and Sponsored Programs*.

IX. **No Liability Protection Afforded by NYU or NYU Langone Health**

Faculty Members must understand that risk and liability for injuries arising out of the Faculty Member's outside consulting is personal to the Faculty Member and does not accrue to NYU or NYU Langone Health. NYU and NYU Langone Health have no responsibility or liability for Consulting or other external interests of Faculty Members. NYU insurance coverages do not protect Faculty Members engaged in Consulting or other external activities. When entering into arrangements to engage in activities outside the scope of his or her employment, Faculty Members are encouraged to consider all risks and use personal legal counsel to ensure their own protection and compliance with applicable laws.

X. **Definitions**

A. A "**Conflict of Commitment**", as discussed in greater detail in NYU Langone Health's *Policy on Faculty Conflicts of Commitment* occurs when a Faculty Member's Outside Activities compromise or may compromise his or her ability to meet the Faculty Member's obligations to NYU.

B. **“Consulting”** refers to any remunerated external consulting activity performed by a Faculty Member in the Faculty Member’s area of professional competence outside of the Faculty Member’s appointment to NYU and NYU Langone Health.

C. **“Faculty Member”** means faculty members of NYU Grossman School of Medicine and NYU Long Island School of Medicine, including adjunct, clinical, voluntary and visiting faculty.

D. **“NYU Langone Health”** includes NYU Langone Health System, NYU Langone Hospitals (including all inpatient and ambulatory facilities), NYU Grossman School of Medicine, NYU Long Island School of Medicine and all entities that are controlled by any of them, except where specifically excluded.

XI. **Enforcement**

Violations of this Policy are subject to disciplinary action, up to and including termination of employment or association with NYU Langone Health, in accordance with NYU Langone Health disciplinary policies and procedures applicable to the Faculty Member.

XII. **Questions**

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

XIII. **Relationship to Other Policies**

A. This Policy replaces *Policy on Faculty Consulting* issued on April 1, 2009, as previously updated August 24, 2012 and July 16, 2018.

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

XIV. **Attachments**

Attachment 1 - NYU Langone Health Faculty Consulting Addendum

ATTACHMENT I

NYU LANGONE HEALTH FACULTY CONSULTING ADDENDUM

1. The Company acknowledges that the Consultant's primary employment responsibility is to New York University and NYU Langone Health (together, "NYU") and that, notwithstanding anything in the consulting agreement to which this Addendum is appended and into which it is incorporated and understood by the parties to be an integral part ("the Agreement"), the Consultant is bound by all policies of NYU, including policies related to the performance of outside consulting activities and related to the ownership of inventions and research data made, created or discovered by the Consultant, and by NYU's commitments to the policies of governmental agencies or other sponsors of the Consultant's research at NYU. In the event of any inconsistencies between the Consultant's obligations to the Company and to NYU, the Company agrees that the Consultant's obligations to NYU shall prevail.
2. The Company further acknowledges that the Consultant has assigned and shall assign to NYU all inventions, discoveries and other intellectual property rights subject to NYU ownership under NYU policies, including all intellectual property made in the course of the Consultant's duties and activities at NYU or made with greater than incidental use of NYU resources. The Company shall have no rights under this Agreement to any publication, invention, discovery, improvement, or other intellectual property whatsoever owned by NYU or developed as a result of research financed, in whole or in part, by funds provided by or under the control of NYU.
3. The Consultant and the Company may not use in this engagement the facilities, equipment, materials, funds, or resources owned or administered by NYU or located on any premises of NYU, or engage or employ students, trainees, post-doctoral fellows or other employees of NYU to provide services under the Agreement. The Consultant also must not disclose or use any inventions owned by NYU or any unpublished data or results of research or clinical activity of NYU in the services to the Company.
4. From time to time, the Consultant may be unavailable to perform consulting duties. Should such unavailability be attributable to prior obligations to NYU, including but not limited to, teaching and other academic duties and attending scientific conferences, such unavailability shall not be considered a breach of this Agreement.
5. Nothing in this Agreement shall be interpreted to prohibit the Consultant from engaging in clinical, research or teaching activities at NYU or from accepting research or education funding from third parties, nor limit the Consultant's ability to publish work generated at or on the behalf of NYU, nor infringe on the Consultant's academic freedom.
6. In the event that the services including speaking at an event sponsored by the Company, the Company acknowledges that the Consultant must comply with requirements and restrictions outlined in the Policy on Speaking Supported by Industry, including, but not limited to, disclosure of the Consultant's relationship with the Company to the audience prior to the start of the Consultant's lecture/presentation.
7. The Company agrees that the Consultant serves the Company under this Agreement in his individual capacity, as an independent contractor, and not as an agent or representative of NYU, that NYU exercises no authority or control over the Consultant while acting in such capacity, that NYU receives no benefit from such activity, that NYU is not a party to this Agreement, and that NYU makes no representation or warranties under this Agreement and assumes no liability or obligation in connection with any such work or service by the Consultant. The Company further agrees that any breach, error, or omission by the Consultant acting in such capacity or otherwise under this Agreement shall not be imputed or otherwise attributed to NYU. Except for accurately describing the Consultant's affiliation with NYU, neither party shall use the NYU name in a manner that would identify NYU with any product or any commercial or other activity that would imply endorsement or support thereby by NYU.
8. The Company agrees, at its sole expense, to defend NYU against, and to indemnify and hold NYU harmless from, any claim, liability, judgment, cost, expense, damage, deficiency, loss, or obligation, of any kind or nature (including without limitation reasonable attorneys' fees and other costs and expenses of defense) relating to a claim or suit by a third party against NYU, either arising from the Agreement, the Consultant's performance of services for the Company under the Agreement, or any Company products or services which result from the Consultant's performance of services under the Agreement.
9. To the extent the terms of this Addendum conflict with any of the terms of the Agreement, the terms of this Addendum will be deemed to supersede.