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|        | <b>Roswell Park<br/>Cancer Institute</b><br><br>Policy and Procedure | <b>Date Issued:</b><br><br>3/1/2000                                  | <b>Number:</b><br><br>218.1      |
| <b>Title:</b><br>Outside Activity and Honoraria   |  | <b>Revision:</b><br>8  | <b>Effective Date:</b><br>6/6/16 |
| <b>Prepared by:</b><br><br>Outside Activity Committee; Department of<br>Human Resources |  | <b>Approved by:</b><br><br><br>Michael B. Sexton, General<br>Counsel | <b>Page:</b><br><br>1 of 6       |

**A. GENERAL STATEMENT OF POLICY**

No employee of Roswell Park Cancer Institute (RPCI) or Health Research Inc., RPCI Division (HRI) shall engage in any Outside Activity which (i) interferes or is in conflict with the proper and effective performance of the employee's duties and responsibilities at RPCI or HRI; (ii) brings discredit to or causes unfavorable criticism of RPCI or HRI; and/or (iii) assumes or usurps an opportunity that should rightly belong to RPCI.

**B. SCOPE**

This policy and procedure applies to all employees of RPCI and HRI.

**C. ADMINISTRATION**

This policy and procedure will be coordinated through the Office of the Vice President for Human Resources in conjunction with the Outside Activity Committee.

**D. POLICY / PROCEDURE**

**1. Definitions**

- a. "Covered Employee" shall mean any RPCI or HRI employee who meets any one of the following criteria: (i) is required to have a New York State or federal government-issued license, registration or certification in order to perform the duties and responsibilities of the employee's RPCI or HRI employment; (ii) is designated by the RPCI HR Department as a Policy-Maker under NYS regulations; (iii) is at salary grade 23 and above.
  
- b. "Faculty" shall mean, for purposes of this policy, a member of the faculty (including an adjunct member of the faculty) at the State University of New York and RPCI or HRI employees serving in the title of Research Scientist, Cancer Research Scientist, Research Physician, Research Psychiatrist or Psychiatrist who is seeking approval of Outside Activity and/or Honoraria for Outside Activity that is within the subject matter of his or her official academic discipline.
  
- c. "Honorarium" shall mean any payment, which may take the form of a fee or any other compensation, made to an employee of RPCI or HRI in consideration for a service performed that is not part of his or her RPCI or HRI duties. Such service is not to be performed on A+ Time and may include, but is not limited to, delivering a speech, writing or publishing an article, or participating in any public or private conference, convention, meeting or similar event or other

Outside Activity. Honorarium shall also include expenses incurred for travel, lodging and meals related to the service performed.

d. "Outside Activity" shall mean any non-RPCI/HRI employment (including self-employment) or provision of personal services including consulting, non-RPCI teaching, clinical (e.g., moonlighting at another hospital), speaking (e.g., speaking on behalf of a pharmaceutical company), expert witness services, holding elected or appointed public office, and serving as a director or officer of a for profit or not for profit entity. Outside Activity includes services for which an Honorarium is to be paid to the RPCI/HRI employee but does not include services for which a Service Payment (as defined below) is to be paid.

e. "Interested Source" shall mean any person or entity who on his or her own behalf, or on behalf of an entity, satisfies any one of the following:

- (1) is regulated by, negotiates with, appears before, seeks to contract with or has contracts with, or does other business with: (i) the RPCI/HRI employee, in his or her official capacity; (ii) RPCI or HRI; or (iii) any other New York State Agency when RPCI or HRI is to receive the benefits of the contract; or
- (2) is required to be listed on a statement of registration pursuant to §1-e(a)(1) of article 1-A of the Legislative Law and lobbies or attempts to influence actions, decisions, or policies of RPCI or HRI; or
- (3) is the spouse or unemancipated child of any individual satisfying the requirements of section (2) above; or
- (4) is involved in any action or proceeding, in which administrative and judicial remedies thereto have not been exhausted, and which is adverse to either: (i) the RPCI/HRI employee in his or her official capacity; or (ii) RPCI or HRI; or
- (5) has received or applied for funds from RPCI or HRI at any time during the previous 12 months up to and including the date of the proposed or actual receipt of the Honorarium in question.

f. "Outside Activity Committee" is the committee that reviews applications for approval of outside activity and/or honoraria on behalf of and as designee of the President and CEO of RPCI and shall be composed of at least the following members: Vice President Human Resources, Vice President Corporate Ethics and General Counsel (or an RPCI attorney designated by General Counsel).

g. "Policy Maker" shall mean an RPCI employee who holds a position that is determined by the RPCI HR Department to be a policy making position as reported to the New York State Commission on Public Ethics pursuant to the Public Officers Law. Generally, RPCI policy makers include senior administrative staff, department chairs, division chiefs and department heads (RPCI staff should contact HR with questions on this).

h. "Service Payment" shall mean any payment of money for any action or service performed by an employee of RPCI or HRI that is part of his or her official duties and benefits RPCI or HRI (generally performed on A+ time). Such action may include but is not limited to, delivering a speech, writing or publishing an article or making a presentation. See [Policy 122.1](#) for the procedures to be followed with respect to Service Payments.

## **2. Approval for Outside Activity and Honoraria**

a. Who is Required to Obtain Approval.

- (1) Every RPCI or HRI employee, except per diem employees, is required to obtain prior approval for Outside Activity if he/she will receive an Honorarium or compensation for the Outside Activity.
- (2) Covered Employees are required to obtain prior approval for Outside Activities, regardless of whether they will receive compensation or Honoraria for the Outside Activity.
- (3) Policy Makers must obtain the approval of the New York State Joint Commission on Public Ethics (in addition to RPCI approval through the Outside Activity Committee) for the following types of Outside Activities:
  - i. any job or employment or business venture that generates or is expected to generate more than \$5000 in compensation annually;
  - ii. holding an elected or appointed public office;
  - iii. serving as a director or officer of a for profit entity (regardless of compensation);
  - iv. serving as a director or officer of a not for profit entity when compensation is more than \$5000 annually;
  - v. in addition to under the circumstances described above in this section, the President and CEO of RPCI must seek approval from JCOPE for Outside Activity consisting of a job, employment or business venture that generates or is expected to generate \$1000 per year; and/or serving as a director or officer of a not for profit entity regardless of compensation.
- (4) Any Covered Person who is required to file a financial disclosure statement with the New York State Joint Commission on Public Ethics shall report any Honorarium in excess of \$1000 (or all Honoraria the aggregate total of which exceed \$1000 received from a single source) in his or her financial disclosure statement for the applicable year.

b. Procedure to Obtain Approval

- (1) Applications for obtaining approval under this policy may be obtained on-line via RPCI's web site (under your name on i2 there will be an outside activity tab), under the Policy & Procedures Tab, Forms and Templates, Human Resources or from the Department of Human Resources, Research Studies Center, 1st Floor.
- (2) Completed applications must be returned to the Vice President of Human Resources and must include the endorsement of the requesting employee's Department Chair/Head/Principal Investigator.
- (3) The application shall contain the following information, as applicable:
  - i. the name of the employee;
  - ii. the identity of the outside employer, if applicable, and nature of that employer's business;
  - iii. a detailed description of the services to be performed by the employee including the dates and locations where the Outside Activity will be performed;
  - iv. the amount of compensation or Honorarium, and when applicable, an itemization of the amounts to be paid for personal services, registration, travel, lodging and meals, etc.;

- v. a copy of any proposed written agreement to be signed by the employee in connection with the Outside Activity.
- (4) The Department of Human Resources will initially receive and review each application for completeness and shall proceed as follows:
- i. all applications for review of expert witness engagements will be forwarded to the VP for Corporate Ethics for review and decision;
  - ii. all other applications will be forwarded to the members of the RPCI Outside Activity Committee for review and determination by majority vote.
- (5) The Outside Activity Committee shall make its determination based on its interpretation of whether the proposed outside activity is in accordance with the applicable provisions of the New York State Public Officers Law, JCOPE Advisory Opinions, pertinent RPCI policies, procedures or regulations governing employee conduct and other factors including for example: whether there appears to be a significant conflict as defined in RPCI policy; and/or a physician-applicant has other relationships with the same entity or related entities; and/or the business in question is in competition with a service provided at RPCI/HRI; and/or the business in question is a referral source to or from RPCI/HRI. The Conflict of Interest Committee may be consulted as necessary and appropriate.
- (6) The Outside Activity Committee may approve the Outside Activity and/or Honorarium provided the following conditions are met:
- i. An amount equal to a maximum of 50% of a FTE employee's gross salary may be earned from outside sources annually (excluding equity interests and stock dividends), with no more than 25% of gross RPCI/HRI salary earned from any single outside source.
  - ii. RPCI/HRI personnel, equipment and time are not used in preparing for or performing the Outside Activity; (Note: If an agreement requires the use of RPCI/HRI resources, it should be restructured as an agreement with RPCI/HRI for the employee's services.)
  - iii. RPCI/HRI funds are not used to pay the RPCI/HRI employee's attendance, registration, travel, lodging or meal expenses related to the Outside Activity;
  - iv. If the Outside Activity is to be performed during the RPCI/HRI employee's official work day, he or she must charge accrued leave (other than sick leave) to perform the Outside Activity;
  - v. If the Outside Activity, compensation for Outside Activity or Honorarium is offered by or on behalf of an Interested Source, all of the following criteria must be met:
    - a. it is not reasonable, under the circumstances, to infer that the offer of Outside Activity, the compensation or Honorarium was intended to influence the RPCI/HRI employee in the performance of he/her official duties;
    - b. the offer of Outside Activity, the compensation or Honorarium could not under the circumstances be reasonably expected to influence the RPCI/HRI employee in the performance of his or her official duties;

- c. the offer of Outside Activity, compensation or Honorarium is not, under the circumstances, intended as a reward for any official action on the RPCI/HRI employee's part;
  - d. the Outside Committee determines that there is no attempt to conceal the fact that an Interested Source is involved in the Outside Activity or payment of the Honorarium.
  - e. performing the Outside Activity and/or accepting the Honorarium do not violate New York State Public Officers Law section 74, the federal or NY State anti-kickback laws or self-referral laws. In that connection, for example, acting as a paid consultant for a pharmaceutical company may be permissible under certain conditions including that a time-limited contract is in place that outlines the specific deliverables, tasks, responsibilities and compensation consistent with the expertise provided.
- (7) All determinations by the Outside Activity Committee shall be reported to the Conflict of Interest Committee.
  - (8) If the Outside Activity Committee approves the application, it shall include a statement on the application indicating that the application has been approved in accordance with the conditions set forth in this policy and in 19 NYCRR 930.5 and 19 NYCRR part 932, as applicable.
  - (9) Following the determination of the Outside Activity Committee, the VP, Corporate Ethics will advise the Vice President for Human Resources who will provide the employee with a copy of the decision. A copy of the final decision will be placed in the employee's Personal History Folder and in an Administrative Outside Employment folder maintained in the department of Human Resources, and kept in an outside activity database for a period of at least three years.
  - (10) An approval for Outside Activity is valid until such time as there is a material change in the employee's RPCI/HRI responsibilities or in the Outside Activity at which time a new application for approval must be submitted. However, on an annual basis, the RPCI/HRI employee who is engaging in approved Outside Activity must inform the Department of Human Resources in writing that he/she is still engaged in the Outside Activity for which approval was previously granted.
  - (11) Each request for approval of Outside Activity will be reviewed and decided upon on its own merits, considering such factors as the type of work, type of business and duration of the employment.
  - (12) RPCI/HRI reserves the right in all cases to review the employee's time, accruals, RPCI e-mail and telephone activity, etc. to ensure that RPCI/HRI resources, time, equipment or personnel have not been inappropriately utilized in connection with approved Outside Activity.

### **3. General Rules for all Outside Activities.**

- a. For full-time RPCI/HRI employees, RPCI or HRI shall be the primary employer. Each employee's responsibilities at RPCI/HRI must be the major focus of the employee's energies, efforts and talents.
- b. Before agreeing to engage in any Outside Activity, an RPCI or HRI employee should consider whether the Outside Activity violates any of the statements in the General Statement of Policy

above. The employee should consult with his supervisor or the Vice President of Corporate Ethics if he/she has any questions or concerns in this regard.

- c. When performing Outside Activity, the RPCI/HRI employee must make it clear that he/she is not representing RPCI in any capacity.
- d. In the event that an RPCI or HRI employee is acting as a clinical instructor on behalf of a professional school using RPCI as a clinical site, then the employee may work during otherwise normal working hours (but still must use personal time accruals and not A+ Time); may use RPCI equipment or resources as are required in the normal course of doing the instructing, and should wear an identifying badge indicating that they are acting on behalf of the professional school for which the outside employment has been approved.
- e. No RPCI or HRI employee may engage in a specific outside activity commonly referred to as a speakers' bureau if the arrangement has any of the following characteristics: 1) the company has the contractual right to dictate or control the content of the presentation or talk; and/or 2) the company creates the slides or presentation material and has final approval of the content and edits; and/or 3) the RPCI employee is expected to act as a company's agent or spokesperson for the purpose of disseminating company or product information.
- f. Ghostwriting or the unacknowledged, undisclosed provision of content for any professional presentation to be provided by an RPCI/HRI employee as Outside Activity is prohibited.
- g. Honoraria may not be accepted to attend a sales presentation, to attend conferences where recreation or marketing are the primary focus, or for activities which are part of the physician or research faculty's RPCI/HRI-duties.

#### **4. Additional Rules for Expert Witness Engagements:**

- a. Expert witness engagements may not exceed five in number per physician/employee per year.
- b. To avoid conflicts of interest, expert witness testimony should generally not be provided in cases pending in the eight Western New York counties or in Monroe County.
- c. Many professional and medical specialty societies have adopted guidelines for expert witness engagements. RPCI/HRI physician/employees are encouraged to consult such guidelines in making a decision on whether to testify as an expert witness or not.
- d. Expert witnesses are expected to be impartial and should not adopt a position as an advocate or partisan in the legal proceeding.
- e. Compensation for the expert witness should be reasonable and commensurate with the time and effort necessary to prepare for the engagement. As a general guideline, appropriate compensation for a physician expert witness is \$300 per hour plus travel and lodging.

#### **E. DISTRIBUTION**

This Policy and Procedure will be distributed to all RPCI Managers via the RPCI internal web page and to holders of backup hard copies of the manual. Managers are responsible for communicating policy content to pertinent staff.