

 <b>ROSWELL PARK</b> <small>COMPREHENSIVE CANCER CENTER</small>	<b>Roswell Park Comprehensive Cancer Center</b> Policy and Procedure	<b>Date Issued:</b> 3/1/2000	<b>Number:</b> 218.1
<b>Title:</b> Outside Activity and Honoraria	<b>Revision:</b> 9	<b>Effective Date:</b> 3/5/2018	
<b>Prepared by:</b> Outside Activity Committee; Department of Human Resources	<b>Approved by:</b>  Michael B. Sexton, General Counsel	<b>Page:</b> 1 of 6	

**A. GENERAL STATEMENT OF POLICY**

No employee of Roswell Park Comprehensive Cancer Center (Roswell Park) or Health Research Inc., Roswell Park 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 Roswell Park or HRI; (ii) brings discredit to or causes unfavorable criticism of Roswell Park or HRI; and/or (iii) assumes or usurps an opportunity that should rightly belong to Roswell Park.

**B. SCOPE**

This policy and procedure applies to all employees of Roswell Park 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 Roswell Park 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 Roswell Park or HRI employment; (ii) is designated by the Roswell Park 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 Roswell Park or HRI employees serving in the title of Chair, Chairperson, Chief, Distinguished Member (all parenthetics), Member (all parenthetics), Associate Member (all parenthetics), Assistant Member (all parenthetics) Research Scientist, Cancer Research Scientist, Research Physician, Staff Physician (all parenthetics), Dentist, Research Psychiatrist, Psychiatrist, or Medical Psychologist 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 Roswell Park or HRI in consideration for a service performed that is not part of his or her Roswell Park 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-Roswell Park/HRI employment (including self-employment) or provision of personal services including consulting, non-Roswell Park 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 Roswell Park/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:
  - i. is regulated by, negotiates with, appears before, seeks to contract with or has contracts with, or does other business with: (i) the Roswell Park/HRI employee, in his or her official capacity; (ii) Roswell Park or HRI; or (iii) any other New York State Agency when Roswell Park or HRI is to receive the benefits of the contract; or
  - ii. 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 Roswell Park or HRI; or
  - iii. is the spouse or unemancipated child of any individual satisfying the requirements of section (2) above; or
  - iv. 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 Roswell Park/HRI employee in his or her official capacity; or (ii) Roswell Park or HRI; or
  - v. has received or applied for funds from Roswell Park 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 Roswell Park and shall be composed of at least the following members: Vice President Human Resources (or designee), Ethics Officer (or other member designated by General Counsel), and Compliance Officer.
- g. "Policy Maker" shall mean a Roswell Park employee who holds a position that is determined by the Roswell Park 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, Roswell Park policy makers include senior administrative staff, department chairs, division chiefs, and department heads. Roswell Park and HRI employees may contact HR with questions regarding their policy maker status.

- h. "Service Payment" shall mean any payment of money for any action or service performed by an employee of Roswell Park or HRI that is part of his or her official duties and benefits (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.
- i. Covered Employees are required to obtain prior approval for Outside Activities, regardless of whether they will receive compensation or Honoraria for the Outside Activity.
  - ii. Policy Makers must obtain the approval of the New York State Joint Commission on Public Ethics (in addition to Roswell Park approval through the Outside Activity Committee) for the following types of Outside Activities:
    1. any job, employment, or business venture that generates or is expected to generate more than \$5000 in compensation annually;
    2. holding an elected or appointed public office;
    3. serving as a director or officer of a for profit entity (regardless of compensation);
    4. serving as a director or officer of a not for profit entity when compensation is more than \$5000 annually;
    5. in addition, the President and CEO of Roswell Park 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.
  - iii. Any Covered Employee 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
- i. Applications for obtaining approval under this policy may be accessed on-line via the employee's personal i2 page by clicking on the "My Outside Activity" link under the Related Links section.
  - ii. The application shall contain the following information, as applicable:
    1. the name of the employee;
    2. the identity of the outside employer, if applicable, and nature of that employer's business;
    3. a detailed description of the services to be performed by the employee including the dates and locations where the Outside Activity will be performed;
    4. 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.;
    5. a copy of any proposed written agreement to be signed by the employee in connection with the Outside Activity. The written agreement must

contain the following language pertaining to Intellectual Property –  
“Roswell Park does not permit or authorize Employee to engage in any outside employment requiring a commitment of Employee’s intellectual property. Notwithstanding any inconsistent provision in this Agreement, Employee does not agree to the transfer or release of any intellectual property whatsoever to (Company). Roswell Park takes no interest in (Company’s) intellectual property by virtue of this Agreement.”

- iii. Completed applications will be electronically routed to the office of the Vice President of Human Resources and must include the endorsement of the requesting employee's Department Chair/Head/Principal Investigator.
- iv. The Department of Human Resources will initially receive and review each application for completeness and shall proceed as follows:
  1. all applications for review of expert witness engagements will be forwarded to the Ethics Officer for review and decision;
  2. all other applications will be forwarded to the members of the Outside Activity Committee for review and determination by majority vote.
- v. 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 Roswell Park policies and procedures, or regulations governing employee conduct and other factors including for example: whether there appears to be a significant conflict as defined in Roswell Park 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 Roswell Park/HRI; and/or the business in question is a referral source to or from Roswell Park/HRI. The Conflict of Interest Committee may be consulted as necessary and appropriate.
- vi. The Outside Activity Committee may approve the Outside Activity and/or Honorarium provided the following conditions are met:
  1. 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 Roswell Park/HRI salary earned from any single outside source.
  2. Roswell Park/HRI personnel, equipment, and time are not used in preparing for or performing the Outside Activity; (Note: If an agreement requires the use of Roswell Park/HRI resources, it should be restructured as an agreement with Roswell Park/HRI for the employee’s services.)
  3. Roswell Park/HRI funds are not used to pay the Roswell Park/HRI employee’s attendance, registration, travel, lodging, or meal expenses related to the Outside Activity;
  4. If the Outside Activity is to be performed during the Roswell Park/HRI employee’s official work day, he or she must charge accrued leave (other than sick leave) to perform the Outside Activity;
  5. 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 Roswell Park/HRI employee in the performance of his/her official duties;

- b. the offer of Outside Activity, the compensation, or Honorarium could not under the circumstances be reasonably expected to influence the Roswell Park/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 Roswell Park/HRI employee's part;
  - d. the Outside Activity 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 does 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.
6. All determinations by the Outside Activity Committee shall be reported to the Conflict of Interest Committee.
  7. 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.
  8. Following the determination of the Outside Activity Committee, the Outside Activity Administrator will send an email to the employee with a copy of the Committee's decision. The approval email will include any stipulations outlined by the Committee that must be followed. A copy of the approved application will also be emailed to the employee. All approvals/denials will be kept in the outside activity database.
  9. An approval for Outside Activity is valid until such time as there is a material change in the employee's Roswell Park/HRI responsibilities or in the Outside Activity, at which time a new application for approval must be submitted. However, the Roswell Park/HRI employee who is engaging in approved Outside Activity must reapply for approval through their i2 "My Outside Activity" link after the approved term has expired. Generally, approvals are for a one (1) year period.
  10. 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.
  11. Roswell Park/HRI reserves the right in all cases to review the employee's time, accruals, Roswell Park e-mail and telephone activity, etc. to ensure that Roswell Park/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 Roswell Park/HRI employees, Roswell Park or HRI shall be the primary employer. Each employee's responsibilities at Roswell Park/HRI must be the major focus of the employee's energies, efforts, and talents.
- b. Before agreeing to engage in any Outside Activity, a Roswell Park 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/her supervisor or the Ethics Officer if he/she has any questions or concerns in this regard.

- c. When performing Outside Activity, the Roswell Park/HRI employee must make it clear that he/she is not representing Roswell Park in any capacity.
- d. In the event that a Roswell Park or HRI employee is acting as a clinical instructor on behalf of a professional school using Roswell Park as a clinical site, the employee may perform outside work during otherwise normal working hours (but still must use personal time accruals and not A+ Time); may use Roswell Park 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 Roswell Park 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 Roswell Park/HRI 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 a Roswell Park/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 Roswell Park/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. Roswell Park/HRI physician/employees are encouraged to consult such guidelines in making a decision on whether to testify as an expert witness.
- 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 Roswell Park Managers via the Roswell Park internal web page and to holders of backup hard copies of the manual. Managers are responsible for communicating policy content to pertinent staff.