

**DEPARTMENT OF
VETERANS AFFAIRS**

Memorandum

Date: **MAR 12 2010**

From: Executive in Charge, Office of the Under Secretary for Health (10)

Subj: Outside Activities of Veterans Health Administration Employees

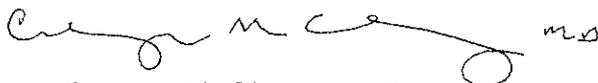
To: All Veterans Health Administration Employees

Thru: Deputy Under Secretary for Health for Operations and Management (10N)
Acting Assistant Deputy Under Secretary for Health for Clinical Operations (10NC)

1. The special relationship between Veterans Health Administration (VHA) employees and the Veterans we serve demands adherence to the highest ethical standards. Federal ethics regulations, criminal conflict of interest statutes and professional standards govern the outside activities of Department of Veterans Affairs (VA) employees, whether or not they are compensated. Recently, the United States Department of Justice (DOJ) reported the conviction of a medical device manufacturer's sales representative for health care fraud. Unfortunately, the evidence supporting the guilty plea indicates that at least 3, and possibly as many as 29, VA practitioners received payments or illegal gifts from this medical device manufacturer to act as consultants, serve on speaker's bureaus, serve as preceptors, or otherwise promote the products of this company to other VA practitioners. Five objectionable practices falling under the rubric of "education" were identified as areas of concern: targeted speaking engagements, paid "preceptorships," "peer-to-peer" training, paid training by VA providers to company sales personnel and paid service by VA providers on Advisory Boards.
2. Criminal conflict of interest statutes and the Standards of Conduct for Employees of the Executive Branch apply to an employee's participation in activities outside of the Federal government, such as becoming a consultant or paid speaker for a pharmaceutical company or medical device manufacturer. Employees cannot participate in official matters affecting their own financial interests or that of an outside employer. The Standards of Conduct also prohibit participation in an official matter when an employee is a contractor or consultant for an entity that is a party or represents a party to that matter. The same laws also prohibit "peer-to-peer" marketing. Following are the general government ethics laws and regulations applicable to activities with entities outside the Federal government:
 - a. Employees may not use their public office for the private gain of themselves or the outside entity. 5 C.F.R. § 2635.702.
 - b. Employees may not, with or without compensation, represent an outside entity before any Federal agency. 18 U.S.C. §§ 203 and 205.
 - c. Employees may not make unauthorized use of official time or Government property for personal activities with the outside entity. 5 C.F.R. §§ 2635.704 and 705.

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- d. Employees may not give the appearance that VA sanctions or endorses the outside entity or the employee's activities with the outside entity. 5 C.F.R. § 2635.702(b) and (c).
 - e. A criminal statute, 18 U.S.C. § 1905, protects and prohibits the use or disclosure of trade secrets and confidential business information. Employees also have a continuing obligation to the Government not to disclose or misuse any information acquired as part of their official duties and which is not generally available to the public. 5 C.F.R. § 2635.703.
3. Many arrangements between physicians and outside companies are transparent to regulators and the general public. The Open Payments Act requires that drug and device companies report payments made to physicians and teaching hospitals for things like travel, research, gifts, speaking fees, and meals. Physicians must also report ownership interests held by them or their immediate family members in such companies. These reports are publicly accessible.
 4. The Office of General Counsel (OGC) Ethics Specialty Team (EST) serves as VA's government ethics officials. While VA does not require that employees obtain prior approval for outside activities, you are encouraged to contact a government ethics official before engaging in outside activities or if you have other concerns. It is important to remember that even when an outside activity is legal, if it will generate a sufficient appearance of impropriety, you should not engage in it. General government ethics guidance may be found on the EST's [SharePoint](#) site. However, if an employee consults with a government ethics official before engaging in an activity, makes full disclosure of the relevant facts, and acts in good faith reliance on that guidance, the employee has "safe harbor" from any administrative action arising out of that action even if the guidance is incorrect. This "safe harbor" protection does not preclude the DOJ from taking further action.
 5. For additional questions, please reference Attachment A and contact your OGC EST.



Carolyn M. Clancy, M.D.

Attachment:

Attachment A-- [How to Contact a Government Ethics Official at Department of Veteran Affairs](#)

References:

[Standards of Conduct for Employees of the Executive Branch. 5 CFR Part 2635](#)
VHA Handbook 1004.07, Financial Relationships between VHA Health Care Professionals and Industry

To Contact a Government Ethics Official at Department of Veterans Affairs:

VA Central Office (VACO):

Tammy Kennedy, Chief Counsel/VA's Designated Agency Ethics Official (DAEO)

Mark Jaynes, Deputy Chief Counsel/Alternate DAEO

They and other Ethics Officials at VA Central Office may be contacted at

GovernmentEthics@va.gov or (202) 461-6000 or (202) 461-7637

Outside VACO:

OGCNorthAtlanticEthics@va.gov CT, DC, DE, MA, MD, ME, NC, NH, NJ, NY, PA, RI, VA, VT, WV

OGCSouthEastEthics@va.gov AL, FL, GA, KY, Puerto Rico, SC, TN

OGCMidwestEthics@va.gov IA, IL, IN, KS, MI, MN, MO, NE, ND, OH, SD, WI

OGCContinentalEthics@va.gov AR, CO, LA, MS, MT, OK, TX, UT, WY

OGCPacificEthics@va.gov AK, AZ, CA, Guam, HI, ID, NM, NV, OR, Philippines, WA

Note: For questions about ethical issues (other than those covered in Government ethics) that arise in patient care, health care management, and research, VA employees as well as Veterans, patients and their families may contact the National Center for Ethics in Health Care at vhaethics@va.gov or (202) 632-8457.

To inquire or report concerns about suspected compliance violations within VHA business operations:

- Call the VHA CBI Helpline toll-free: (866) 842-4357
- Fax the VHA CBI Helpline: (201) 643-1184
- Email the VHA CBI Helpline: vhacbihelpline@va.gov
- Write to the VHA CBI Helpline:
VHA/Office of Compliance and Business Integrity
Attention: VHA CBI Helpline
110A Meadowlands Parkway, Suite 202
Secaucus, NJ 07094

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