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Department of Veterans Affairs
Veterans Health Administration
Washington, DC 20420

VHA HANDBOOK 1660.03
Transmittal Sheet
September 22, 2008

**CONFLICT OF INTEREST ASPECTS OF CONTRACTING FOR SCARCE
MEDICAL SPECIALIST SERVICES, ENHANCED USE LEASES, HEALTH CARE
RESOURCE SHARING, FEE BASIS AND INTERGOVERNMENTAL PERSONNEL
ACT AGREEMENTS (IPAS)**

- 1. REASON FOR ISSUE.** This Veterans Health Administration (VHA) Handbook is being re-issued without significant changes to permit recertification of the policy. It contains procedures regarding conflict of interest aspects of Scarce Medical Specialist Service (SMSS) contracts and Health Care Resource Sharing (HCRS) agreements, Intergovernmental Personnel Act (IPA) agreements, Enhanced Use Leases, and Fee Basis agreements which apply to all VHA organizational elements.
- 2. SUMMARY OF MAJOR CHANGES.** The organizational responsibility changed from the Office of the Chief Financial Officer (17), Medical Sharing Office (176B) to the VHA Procurement and Logistics Office (10F).
- 3. RELATED DIRECTIVE.** VHA Directive 1660.1.
- 4. RESPONSIBLE OFFICE.** The VHA Procurement and Logistics Office (10F), is responsible for the contents of this VHA Handbook.
- 5. RESCISSIONS.** VHA Handbook 1660.3, dated July 24, 2002, is rescinded.
- 6. RECERTIFICATION.** This VHA Handbook is scheduled for recertification on or before the last working day of September 2013.

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**CONFLICT OF INTEREST ASPECTS OF CONTRACTING FOR SCARCE
MEDICAL SPECIALIST SERVICES, ENHANCED USE LEASES, HEALTH CARE
RESOURCE SHARING, FEE BASIS AND INTERGOVERNMENTAL PERSONNEL
ACT AGREEMENTS (IPAS)**

1. PURPOSE

This Veterans Health Administration (VHA) Handbook provides procedures for avoiding conflict of interest problems associated with Scarce Medical Specialist Services (SMSS) contracts authorized by Title 38 United States Code (U.S.C.) 7409, Health Care Resource Sharing (HCRS) agreements authorized by 38 U.S.C. 8153, Enhanced Use Leases, 38 U.S.C. Section 8162, Subchapter V, Enhanced-Use Leases of Real Property, August 14, 1991, as amended by Public Law 102-86; Intergovernmental Personnel Act (IPA) agreements, and Fee Basis agreements, 38 U.S.C. 1703.

2. BACKGROUND

General Accounting Office (GAO) and Office of Inspector General (OIG) investigations of VHA practices in the area of scarce medical specialist services contracting reported that some physician supervisors and managers stated they did not know about the applicable conflict of interest rules. GAO and OIG investigators found violations of these rules. In September 1993, in order to correct this problem, VHA issued Directive 10-93-119 that detailed procedures for avoiding conflict of interest problems associated with this type of contracting. This Directive expired September 1995, without notice. Subsequently, during a routine audit of the Ethics Program at the Department of Veterans Affairs (VA) Central Office, the auditors noted the 1993 Directive had expired. It was recommended and agreed that VHA needed to have on record a permanent policy and procedures statement covering this aspect of business.

3. SCOPE OF CONFLICT OF INTEREST

A Government employee who is employed by a contractor is prohibited from participating personally and substantially on behalf of the Government through decision, approval, disapproval, recommendation, rendering of advice, certifying for payment or otherwise in that contract. No VA employee who is an employee, officer, director, or trustee of an affiliated university, or who has a financial interest in the contract, may lawfully participate in a VA contract or any other Government contract with the university. VHA is committed to adhering to and enforcing all applicable laws and regulations concerning employee conflicts of interest.

Authority: Title 18 U.S.C. Section 208(a), and Title 5 Code of Federal Regulations (CFR) Section 2635.402.

4. RESPONSIBILITY

Facility Directors must ensure that each Chief of Staff and each physician, clinician or allied health supervisor, or manager, receives a copy of VHA Handbook 1660.3, and

VA Form 10-21009 (NR), Acknowledge Form (see App. A). A copy of the letter and the signed acknowledgment must be placed on the right side of the clinician's Official Personnel Folder. This action applies to all paid physician or allied health supervisors and managers, as well as to any physicians or clinicians who assume supervisory or managerial duties in the future.

5. EXPLANATION OF FEDERAL CRIMINAL STATUTE

a. A Federal criminal statute prohibits a Government employee, whether full-time, part-time, or a special Government employee, from participating personally and substantially in a particular matter in which the employee, to the employee's knowledge, has a financial interest, if the particular matter would directly and predictably affect that financial interest (see 18 U.S.C. Section 208(a) and 5 CFR Section 2635.402). In addition to the employee's own financial interests, the statute imputes to the employee as a personal financial interest for purposes of this restriction, the financial interests of the employee's spouse, minor children, general partners, and any organization which the employee serves as officer, director, trustee, general partner, or employee. The law also imputes to the employee the financial interests of a person or organization with which the employee is negotiating for employment or has an arrangement for prospective employment.

b. A contract is a particular matter. Specific payment vouchers on the contract are also particular matters. The financial interest is directly and predictably affected by the particular matter whenever there is a close casual link between any official decision or action to be taken in the matter and any expected effect (i.e., gain or loss) on the financial interest. Personal and substantial participation is direct action, which is of significance to the matter. This statute applies to all VA employees, all particular matters, and all covered financial interests. **NOTE:** *The conflict of interest restriction here is given in the context of SMSS, HCRS contracts, IPA agreements, Enhanced Use Lease and Fee Basis agreements because this area has produced concerns in the past. The prohibition summarized in the previous paragraph may arise in other VA contexts as well. Other laws and regulations, such as the procurement integrity statute and the standards of conduct, may apply to specific conduct.*

c. If a VA Chief of Staff, service chief, or other VA employee has a financial interest in a contract between VA and an affiliated medical school, including employment by the school or negotiation for prospective employment with the school, the statute prohibits that employee from taking official action on behalf of VA which is "personal and substantial" on the contract between VA and the medical school. This prohibition applies even though the individual physician or clinician may not gain or lose financially from the contract between VA and the medical school, because the financial interest of the school (which is imputed to the employee by law) is affected by the contract.

6. SPECIFIC ACTIVITIES PROHIBITED

The following specific activities, to the extent applicable, as to a SMSS, HCRS, IPA agreements Enhanced Use Leases and Fee Basis contracts for which the affiliated medical school is likely to be a provider are prohibited for a VA physician or clinician who has a financial interest in the contract (including the imputed interests discussed):

- a. Drafting specifications or solicitations.
- b. Acting as Contracting Officer's Technical Representative (COTR).
- c. Negotiating any parts of the contract, including price.
- d. Evaluating bids or proposals.
- e. Selecting or recommending the contractor.
- f. Reviewing, certifying, or approving the contract itself, or any award, modification, extension, specification, bid, proposal, payment voucher, time record, or any other document of significance to the contract.
- g. Reviewing or reporting time and attendance for contract administration purposes.

NOTE: These prohibitions also apply to any non-affiliated entity in which a VA employee has a financial interest.

7. SPECIFIC ACTIVITIES PERMISSIBLE

The following specific activities are permissible by a VA physician or clinician who has a financial interest in the contract (including the imputed interests discussed).

- a. Supervising professional services provided under the contract solely for purposes of ensuring quality of care.
- b. Developing workload projections, so long as such projections are developed independently of the contract for purposes of operating the VA facility and not developed for purposes of contract specification or for contract renewal.
- c. Providing direct patient care within VA responsibilities.
- d. Performing oversight and administration within the employee's VA responsibilities, including record keeping, and quality assurance activities conducted as part of medical facility operations.
- e. Participating in any manner in any particular matter in which neither the employee nor the school has a financial interest, (e.g., acting as COTR in another contract which does not involve the physician's or clinician's outside employer).

f. Engaging in permissible outside activities, such as approved teaching by a full-time employee.

8. DETERMINATION BY REGIONAL COUNSEL

Whether or not an employee has a financial interest in a contract, including an employment or prospective employment relationship with affiliated medical schools, health care providers, health care plans, insurers, and/or any organizations, institutions or other entities or individuals who furnish health care resources, which disqualifies the employee from participating in a SMSS HCRS, IPA, Enhanced Use Lease and Fee Basis contract, necessarily involves a case-by-case determination by Regional Counsel. Generally, if the physician or clinician has a faculty appointment and receives any compensation, or is under the direction of the school, the physician or clinician has at least an imputed financial interest in VA contracts with the school. VHA requires a written opinion from Regional Counsel that an “affiliated” physician or clinician may lawfully participate in the contract before the participation occurs (see VHA Manual M-1, Pt. I, Ch. 34, subpar. 34.01f). The permissible activities described in paragraph 7 are not “participation” in the contract for purposes of the statute.

***NOTE:** Call the local Regional Counsel or, in Central Office, call the Assistant General Counsel (023) for further explanation or advice. VA ethics officials are available in either office to provide specific advice.*

ACKNOWLEDGMENT FORM

I have received, read and agree to abide by the guidance contained in Veterans Health Administration (VHA) Handbook 1660.3, dated September 2008, about conflicts of interest and scarce medical specialist service contracts from the Under Secretary for Health and the Designated Agency Ethics Official.

I understand that this acknowledgment will be placed in my Official Personnel Folder.

(Signature)

(Date)