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| <p><b>Name of Policy:</b> <u>Faculty consulting.</u></p> <p><b>Policy Number:</b> 3364-72-50</p> <p><b>Approving Officer:</b> President</p> <p><b>Responsible Agent:</b> Provost and Executive Vice President for Academic Affairs <del>Provost and Executive Vice President for Health Affairs</del></p> <p><b>Scope:</b> Faculty not bound by the Collective Bargaining Agreement of the AAUP on the University of Toledo, Health Science Campus</p> | <p><b>Effective date:</b> September 20, 2018</p>                            |
| <p><input type="checkbox"/> New policy proposal</p>  | <p><input type="checkbox"/> Minor/technical revision of existing policy</p> |
| <p><input type="checkbox"/> Major revision of existing policy</p>  | <p><input checked="" type="checkbox"/> Reaffirmation of existing policy</p> |

(A) Policy statement

The university permits and encourages interaction by its faculty with both the public and private sectors by means of consulting, provided such activity: (a) further develops the faculty member in a professional capacity; (b) does not interfere with a faculty member’s teaching, research, and service obligations to the university; and (c) is consistent with the mission and objectives of the university. The basic tenet of the university’s policy on faculty consulting is that consulting should complement, and not reduce, the individual’s service to the university. Full-time members of the faculty (including chairpersons) are expected to devote their primary professional loyalty, time, and energy to their university duties, including teaching, research, administrative responsibilities and, where applicable, patient care. The maximum number of consulting days permissible for a member of the faculty on a twelve month full-time (1.0 FTE) appointment is fifty-two (52) days per calendar year. This number is prorated for full-time faculty with less than a twelve month appointment.

(B) Purpose of policy

The purpose of this policy is to establish guidelines, and disclosure and approval requirements for paid external faculty consulting activities. The potential magnitude of paid external consulting activities is such that orderly procedures must be followed to avoid any ethical and legal conflicts of interest and to ensure that such activity does not conflict with the proper discharge of college responsibilities. The following faculty activities are not subject to this policy’s guidelines, and disclosure and approval requirements.

(1) Publication

Scholarly communications in the form of books, movies, television productions, etc., though frequently earning financial profit for a faculty member and for another party,

are not viewed as consultation, but may be subject to university policies governing intellectual property.

(2) Clinical practice

Faculty participation in a practice plan approved by the university board of trustees.

(3) Professional service

External professional activities that reflect normal and expected public service activities of faculty and that do not entail compensation beyond reimbursement for expenses and/or a nominal honorarium. These activities include service on national commissions, on governmental agencies and boards, on granting agency peer-review panels, community agencies, on visiting committees or advisory groups to other universities, and on analogous bodies, such as the American cancer society or the American heart association.

(4) Expert testimony

Faculty members sought to provide expert testimony on medical, scientific and technical matters within their fields of knowledge, skill, experience or education for compensation must obtain approval as described in this policy. It must be made clear in all appearances as an expert witness that the statements and opinions of the witness are their own personal statements and opinions and do not represent in any way an official statement of the university, and that the witness is testifying as a private individual and not as a member of the university faculty. Faculty members required to provide expert testimony if served with a valid subpoena of the court need not seek approval.

(C) Procedure

(1) Disclosure and approval procedures

A faculty member shall complete and submit a consulting proposal form to his or her department chairperson (or dean, if the faculty member is a chairperson) prior to each paid external consulting arrangement. All paid external consulting related to one's area of expertise requires prior approval. The proposal form (attached) shall provide the following information: the nature of the work to be performed; the name of the client; the period of time during which such activity is to be performed; the duration of the arrangement; and when remuneration by the external client exceeds twenty-five (25) percent of the faculty member's total university salary, details of the remuneration must be specified.

Personal consulting agreements between the consulting faculty member and the client must also be included with the proposal form. Although outside consulting arrangements are personal, inappropriate consulting agreement language accepted by a faculty member can create conflicts with his or her obligations to the university and negatively impact his or her ability to perform research and secure sponsored research funding. For example,

consulting agreements that attempt to require assignment of patentable discoveries and/or other intellectual property resulting from activities that use university research funds or facilities, or that relate to the faculty member's scope of employment are in direct conflict with patent policy and regulations policy 3364-70-04. Consulting agreements shall be reviewed by the office of faculty affairs to ensure they are not in conflict with university policies and procedures. Faculty members are encouraged to seek their own legal counsel to advise them of their rights and obligations under a proposed consulting agreement and as they may relate to other consulting agreements already in existence.

Principal investigators/program directors must also disclose to research and grants administration any and all consulting agreements they have to ensure that the terms do not conflict with the terms of any grants or contract agreements between the university and a research sponsor.

Faculty members are encouraged to discuss prospectively with their chairperson (or dean, if the faculty member is a chairperson) the effect of potential paid external consulting activities on their teaching, research, patient care (if applicable), and administrative schedule before submitting a formal proposal. This way, faculty and chairpersons (or dean, if the faculty member is a chairperson) have an opportunity to identify actual or apparent conflicts of commitment so that they can be minimized or resolved. Consulting proposal forms must be filed sufficiently in advance of the planned activity to permit time for a meaningful approval process including the development of a plan to manage any conflict of interest or other legal issues posed by the proposed activity. Faculty members are also required to provide prompt disclosure of material changes in previously disclosed and approved consulting activities.

The major criteria to be used in determining whether a particular paid external consulting activity shall be encouraged or permitted are:

- (a) The effect of the activity on the individual and the college, professionally and academically;
- (b) The extent to which the activity will complement the college's programs; and
- (c) The extent to which the activity will interfere with the effective discharge of the faculty member's responsibilities to the college.

Department chairpersons will recommend approval or denial of each proposal to the dean of the respective college (if the faculty member is a chairperson, this step is eliminated). The dean of each college, in consultation with the chairperson if applicable, will recommend approval or denial of each proposal to the provost, health science campus. Whenever a proposal by a faculty member is disapproved by an official of the university, it is the obligation of that official to provide the faculty member, upon request, with a written statement of the reason for the decision. A faculty member may appeal a denied consulting proposal as described in faculty grievance and appeals policy 05-057.

(2) Prohibited Activities

a) Use of university resources

Faculty members are prohibited from performing consulting activities that involve the use of university-administered funds, facilities, equipment, supplies, or personnel unless permission is obtained as specified in the bylaws, rules and regulations of the university, and the university is appropriately compensated.

(b) Use of university students

Faculty members must be especially sensitive to potential conflicts of interest between their teaching responsibilities vis-a-vis students and trainees working under their supervision and their outside consulting interests. To avoid such conflicts, a university faculty member may not hire or directly supervise a university student in employment activities outside the university while simultaneously serving as either the student's advisor, supervisor or as a participant on that student's dissertation committee without prior approval of the dean.

(c) Activities involving conflicts-of-interest

In the event a faculty member is considering undertaking an outside activity that poses an actual or potential conflict of interest, or may have the appearance thereof, as defined by the conflict of interest policy 03-005, the faculty member must disclose all relevant information as required by that policy.

(d) Allocation of intellectual property rights

An agreement between a faculty member and a third party may not purport to allocate intellectual property rights to the investigator's inventions, technical discoveries, or similar intellectual property in a manner inconsistent with the patent policy and regulations policy 03-003.

(e) Use of university name

The university name shall not be used in relation to any consulting activities, except in describing an individual's credentials, and except in accordance with university policy. Faculty members engaged in consulting must not use the university name in such a manner as to suggest institutional endorsement or support of a non-university enterprise.

(f) Consulting on research grants

In general, university faculty can not serve as paid consultants on research grants, agreements or contracts awarded to the university. When an outside agency contracts with the university to provide research, it agrees to reimburse the university for the costs of that work, except for any approved university cost-sharing. Appropriate reimbursement for all faculty effort devoted to that sponsor should be included in that contract. Accordingly, it is not permissible for a sponsor to pay university faculty additional compensation (e.g. as a consultant) for the performance of the same work. See grants, contract, clinical trials policy 03-001, and all other sponsored programs.

Faculty are personally responsible for any damages or claims for damages which may arise in connection with their paid external consulting activities. The limited immunity conferred by section 9.86 of the Ohio Revised Code does not apply to consulting activities.

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| <p>Approved by:</p> <p>_____</p> <p>Sharon L. Gaber, Ph.D.<br/>President</p> <p>September 20, 2018 _____</p> <p>Date</p> <p><i>Review/Revision Completed by:</i><br/>Provost and Executive Vice President for<br/>Academic Affairs <del>Provost and Executive Vice<br/>President for Health Affairs, Faculty Governance<br/>Committee HSC, HSC faculty</del></p> | <p>Policies superseded by this policy:</p> <ul style="list-style-type: none"> <li>• <i>03-011 Faculty Consulting (previous Health Science Campus policy, revision date 07/01/03)</i></li> </ul> <p>Initial effective date: January 1, 2008<br/>Review/Revision Date: May 2008,<br/>September 20, 2018<br/>Next review date: September 20, 2021</p> |
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