

Attachment 2 - Guidance on Investigating Prohibited Conduct in the Context of Clinical Patient Care

Guidance on Retaining Medical Experts for Allegations of Prohibited Conduct in the Context of Patient Care

1. Application of this guidance. This guidance applies to outside medical experts retained by a Title IX Officer during a Formal Investigation or Other Inquiry into alleged Prohibited Conduct in the context of patient care. The Title IX investigator may obtain an expert opinion to assist in Title IX's assessment of whether conduct by the respondent was Clinically Indicated, whether the complainant provided Informed Consent, or both.

Note that time-sensitive determinations during an Initial Assessment phase may require consultation with internal subject-matter consultants at the location where the alleged conduct took place.

2. Rule against relying upon medical experts with conflicts of interest in the course of a Formal Investigation or Other Inquiry. The University shall not retain or consult with medical experts who have an actual or apparent conflict of interest in connection with a given matter. Actual or apparent conflict of interest may exist when the expert or their immediate family or household member has a professional, financial, or personal relationship with the complainant or the respondent. Examples include:

- a supervisory relationship between the expert or their immediate family or household member and a party;
- a business partnership between the expert or their immediate family or household member and a party;
- the expert or their immediate family or household member serving as or receiving a professional reference from a party;
- past involvement by the expert or their immediate family or household member in the patient's care, or as a referral source to or from the respondent;
- involvement by the expert or their immediate family or household member in the underlying conduct (as a percipient witness, for example);
- involvement by the expert or their immediate family or household member in other allegations made either by complainant or against respondent.

3. Disqualification is warranted where the circumstances are such that the expert is actually or apparently unable to render an opinion that is fair, impartial, and unbiased.
 - a. No assumption of conflict of interest based on prior engagement by the University. Medical experts previously retained or engaged by the University are not automatically assumed to have an actual or apparent conflict of interest. Whether such experts have an actual or apparent conflict of interest should be determined using the criteria in this guidance.

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- b. Impermissible grounds for disqualification. That a medical expert is or is not a particular gender, or is or is not of a particular race, ethnicity, national origin, religion, sexual orientation or other protected class as the party seeking disqualification is not a permissible ground for disqualification.
2. Determination of conflict. The Title IX Officer determines whether a medical expert has an actual or apparent conflict of interest. The Title IX Officer will use the criteria in this guidance, and document their determination in the case file.
3. Pre-retention disclosure of potential grounds for disqualification. Before retaining a medical expert for any particular matter, the Title IX Officer must require the expert to disclose any potential ground for disqualification based on actual or potential conflict of interest. The expert's disclosures should be documented on the expert disclosure form (Appendix A of this document) and maintained in the Title IX file for the matter. Potential grounds for disqualification are described in Section 2, above. Additionally, the expert will be disqualified if they have any reason to believe they cannot render a fair, impartial, and unbiased opinion.
4. Retention agreement statement regarding neutral role of the University. The retention agreement or other contract with the expert or expert firm must emphasize the neutral role of the University in the review, investigation, and adjudication of the matter.
 - a. Sample language. "We wish to emphasize that the University is not a party in this review, investigation, or adjudication, and furthermore does not advocate for or against any party. The potential for future work with the University depends on your skill in carrying out the expert function in accordance with relevant University policies and the standard of care in your particular field of expertise, not on the frequency with which you issue opinions that favor either complainant or respondent."

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Appendix A

Form for Expert Disclosures

I, _____ [Expert Witness Name], make the following disclosures relevant to potential conflicts of interest with respect to Investigation/Matter No. _____, involving Complainant _____ [Complainant Name], Respondent _____ [Respondent Name], whose identities have been disclosed to me in confidence for the sole purpose of assessing potential conflicts. I certify that I am currently board-certified and licensed in good standing to practice in the relevant discipline.

If you answer "Yes" to any of the below, please provide further detail in the space provided, including relevant dates.

1. Do you or does anyone in your immediate family or household have a personal (e.g., social or familial) relationship with the Complainant, the Respondent? ___Yes ___No

2. Is Complainant or Respondent a colleague or partner of yours or any member of your immediate family member or household in the same practice group, department, or division? ___Yes ___No

3. Is Complainant or Respondent or their business or practice in competition with you or your business or practice? ___Yes ___No

4. Do you have a referral relationship with Complainant or Respondent? ___Yes ___No

Issued December 9, 2019

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5. Do you or does any member of your immediate family (to the best of your knowledge) have any financial relationship with Complainant or Respondent? Yes No

6. Have you had any prior involvement in providing assessment, care, or treatment to Complainant or Respondent? Yes No

7. Are you or anyone in your immediate family (to the best of your knowledge) a patient of Respondent? Yes No

8. Are you aware of any other facts or circumstances that might be viewed as undermining your ability to render an opinion that is fair, impartial, and unbiased? Yes No

I certify that the foregoing is true and correct.

Date: _____

Signature: _____