

INFORMATION FOR UAMS FACULTY ON OUTSIDE CONSULTING ACTIVITIES

Consulting agreements may create conflicts with obligations you have to UAMS. These obligations may arise by virtue of your employment, by law, by UAMS policy, and/or from UAMS contractual or other obligations to third parties. UAMS provides this information for you to use in reviewing any proposed consulting agreement. **This information is not provided to you as personal legal advice;** you may want to consider asking your own counsel to review the agreement. Although this document refers throughout to “company,” it applies to any outside entity that may engage your services as a consultant. This document addresses solely matters related to consulting and not to other discloseable interests under UAMS Conflict of Interest policies.

SUMMARY OF RULES APPLICABLE TO OUTSIDE EMPLOYMENT

Outside employment is allowable if:

1. You report and obtain approval of the outside employment from your immediate supervisor prior to commencement of the activity. Faculty must obtain approval from their Dean/Chair or appropriate supervisor through the online UAMS Outside Employment System here: <https://secure.uams.edu/OutsideEmployment/Login.aspx>
2. The work is done off the premises of UAMS.
3. The work is done before or after your scheduled work time or while on leave.
4. The work does not involve the use of materials, supplies, equipment or other property belonging to UAMS except with permission of the appropriate department head and with arrangements to pay applicable expenses.

Faculty must report outside employment in the UAMS Conflict of Interest (COI) Disclosure system, here: <http://www.museCOI.uams.edu> Any outside employment must not constitute an unmanageable conflict of interest and must not interfere with your UAMS duties. Please note: while most outside employment is reportable in the UAMS COI Disclosure system, there are a limited numbers of exclusions from the COI disclosure requirement. One example is income from service on a review panel/advisory committee for US government agencies.

UAMS employees must report income of \$500 a year or more which is earned from another public agency of this state. The report (“Additional Income Statement”) is to be filed with your supervisor and with Ms. Angela Hudson, Assistant to the President, 501.686.2504, ahudson@uasys.edu.

You may work concurrently in two state positions if you receive prior approval from the UAMS Office of Human Resources and the Arkansas Department of Higher Education. Both positions may be with the same or different state agencies or institutions, as long as the combined salaries do not exceed the maximum allowed salary for the highest paid position.

For additional general information, see the [UAMS Employee Handbook](#), [the Board of Trustees Policy 450.1](#) on Outside Employment of Faculty, and UAMS’s Conflict of Interest Policy for Academic Staff Members, (<http://coi.uams.edu>) .

USE OF UAMS RESOURCES

The consulting agreement should be clear that you are entering the agreement as an individual and not as an employee or agent of UAMS. The agreement should not obligate you to use any UAMS resources in performing the consulting work. “UAMS resources” includes time, funding, facilities, equipment, intellectual property (IP), personnel, materials, or information/data that would not be available to the general public and that you would not be free to disclose to other members of the larger scientific community by publication or presentation.

Any consulting agreement that requires you to use UAMS resources (including UAMS IP) should be restructured as an agreement with UAMS for your services as a UAMS employee or as a sponsored research agreement.

SPEAKERS' BUREAUS

As outlined in the UAMS Industry Interaction policy ([UAMS Administrative Guide 4.4.12](#)) consulting agreements cannot be for services that meet the definition of Speakers' Bureau. Speaking engagements are **strictly prohibited activities** for UAMS employees when:

- (i) the Industry sponsor has the contractual right to dictate or control the content of a presenter's presentation
- (ii) the Industry sponsor creates presentation material and has final approval of the content and edits
- (iii) the speaker is expected to act as the Industry sponsor's agent or spokesperson for the purpose of disseminating company or product information

Acceptable speaking engagements supported in whole or in part by Industry must meet all of the following requirements:

- (i) financial support by Industry shall be fully disclosed
- (ii) content shall be determined solely by the presenter
- (iii) slides, abstracts, etc. shall be originated by the presenter
- (iv) the use of the UAMS name shall be limited to identification of the speaker
- (v) the speaker shall not express or imply UAMS approval or endorsement of any product or service
- (vi) attendees shall not receive gifts or compensation for event attendance

INDUSTRY INTERACTION POLICY

Consulting for an outside company must be approved in advance by the Dean or Director. These activities are outside employment which may only be performed while on leave or during UAMS non-working hours. Requests for all faculty will be processed using the electronic outside employment system at <https://secure.uams.edu/OutsideEmployment/Login.aspx>

Consulting agreements must be defined by a formal, written agreement which:

- (i) Clearly defines the tasks to be performed
- (ii) Provides for compensation at fair-market value
- (iii) Is for a defined contract period (i.e., contains an end date)

Also, there may also be an issue under the UAMS Industry Interaction policy if you are in a position to influence UAMS purchase of goods or services from the company. See [UAMS Policy on Industry Interaction, 4.4.12](#), Part C.

STARK LAW & ANTI-KICKBACK STATUTE COMPLIANCE

Because UAMS faculty order, prescribe, recommend, and influence healthcare services and purchasing decisions in their UAMS roles, their outside financial relationships can create legal risk for both the individual *and* UAMS under federal fraud and abuse laws. Any outside consulting arrangement must comply with all applicable federal and state fraud and abuse laws, including the federal Stark Law and Anti-Kickback Statute. Therefore, Employees and Faculty consulting arrangements must be for legitimate and commercially reasonable services. The services must be performed and documented with compensation, set in advance and consistent with fair market value. Compensation must not be determined by the volume or value of referrals or other business generated for the company by the faculty or employee. Consulting arrangements must not require, encourage, or influence the referral, recommendation, ordering, or purchasing of any product or service from UAMS. Faculty may never serve in any sales, marketing, or promotional capacity for a company in exchange for compensation. Any arrangement by an employee to consult with an entity that does, or seeks to do, business with UAMS must be disclosed and is subject to further review and approval by the UAMS Office of General Counsel. This includes any entity whose products or services the faculty member orders, prescribes, recommends, or influences in their UAMS roles.

CONFLICT OF COMMITMENT

Consulting may give rise to a conflict of commitment. Basically, the time you devote to the consulting opportunity cannot interfere with your teaching/research/patient care/service obligations to UAMS. Full

time academic staff must obtain pre-approval for outside employment from their Department Chair/Dean. For additional information, see the conflict of commitment section in UAMS's Conflict of Interest Policy for Academic Staff Members, (<http://coi.uams.edu>).

CONFLICT OF INTEREST

Consulting for an outside company may give rise to a conflict of interest in the context of your research and institutional role at UAMS. You should consult UAMS's Conflict of Interest Policy for Academic Staff Members (<http://coi.uams.edu>) to make sure that your outside activity is performed consistent with the requirements of that policy. If you have questions, you should contact the UAMS Conflict of Interest Office at 501.686.6447.

You must disclose your consulting arrangement in the UAMS COI Disclosure system within 30 days of entering into such a consulting agreement. The Academic COI Committee will review your disclosure and determine whether there is a conflict of interest and, if so, how that conflict should be managed.

ACCESS TO INVENTIONS & CONFIDENTIALITY

The consulting agreement cannot grant a preference to the company for access to inventions (licenses) or to information/data resulting from UAMS research. You should be satisfied that you can comply with any confidentiality obligations you accept (it may be possible, for example, to limit the amount of information you receive and/or to have the company mark it confidential before disclosure). You should also be careful that the agreement does not restrict your right to publish anything that is actually and legitimately research (or could eventually be research) conducted at UAMS.

GOVERNING LAW, VENUE FOR DISPUTES, & LIABILITY/INDEMNIFICATION

The agreement may provide that it is governed by the laws of a state other than Arkansas and/or that any disputes under the agreement will be resolved by the courts of a state other than Arkansas. This means that any lawsuits arising from the consulting relationship would be filed in another state and the other state's laws would apply. It could be costly for you in the event you have to bring suit or defend a suit in another state.

Because you are entering the consulting agreement in your individual capacity, you are personally responsible for any liability you accept under the agreement. UAMS will not indemnify you or provide legal representation for any of your actions under that agreement.

INTELLECTUAL PROPERTY

Most consulting agreements have strict IP terms requiring assignment of patents and copyrights to the outside company. Consulting agreements may restrict your ability to conduct research in the same field as that for which you are engaged as a consultant. This can conflict with your obligations to UAMS under the Patent & Copyright Policy, so consulting agreements should have the following paragraph added:

“Company acknowledges and agrees that it shall have no copyrights, patents, trade secrets, or other intellectual property rights with respect to work performed by Consultant that is not directly related to this Agreement. In particular, Company acknowledges that Consultant has obligations to his employer, The Board of Trustees of the University of Arkansas acting for and on behalf of the University of Arkansas for Medical Sciences (“UAMS”). Company further acknowledges and agrees that in the event that any conflict should arise between the duties set forth in this Agreement and Consultant's obligations to UAMS or sponsors of research at UAMS, Consultant shall notify UAMS immediately, and that Consultant's obligations to UAMS and sponsors of research at UAMS shall take precedence over the terms of this Agreement. No rights to UAMS intellectual property are conveyed under the consulting agreement.”

It is also recommended that consulting agreements contain the following sentence:

“Nothing in this Agreement shall be construed to restrict or hinder the Consultant's ability to conduct current or future research or teaching assignments with the UAMS.”

For additional information, see the Patent and Trademark Policy, [Board of Trustees Policy 210.1](#).

RESTRICTIONS ON COMPETITION/EXCLUSIVITY & SCOPE OF WORK

Consulting agreements often have “non-compete” or exclusivity clauses that restrict your ability to consult, do research for, or otherwise interact with other companies or parties. These restrictions may have significant implications for your future research at UAMS.

An overly broad definition of the scope of work should be avoided. The scope of work should be specifically defined to avoid overlap or conflict with your UAMS research (both current and anticipated).

USE OF NAME (YOURS/UNIVERSITY’S)

The agreement should not require you to participate in any of the company’s promotional activities in a way that may create issues related to the use of your name or that of UAMS. In particular, the agreement should not require the use of UAMS’ name in any way that implies UAMS endorsement of the company or its goods/products. For more information, see the [UAMS Policy on Industry Interaction, 4.4.12](#). This policy also imposes restrictions on your ability to use the UAMS name in non-UAMS activities.