Section 2	General Administrative Policies and Services	04/13/00 -Originated
Subject 2.6	Facilities Use	-Reviewed w/ changes -Reviewed w/o changes
Policy 2.6.5	**Acceptance and/or Solicitation of Gifts or Benefits from Vendors**	Compliance Office -Author

Acceptance and/or Solicitation of Gifts or Benefits from Vendors

Audience

This policy and applicable procedures apply to all UTMB faculty members, employees, students, departments and other UTMB entities.

Policy

To comply with all applicable federal and state laws and U.T. System guidelines, University faculty members, employees, departments, or other UTMB entities may not accept or solicit any gift or benefit that

- **might reasonably tend to influence or be perceived as influencing his/her decision making regarding purchases, contracts, or any other official duty or that he/she knows or should know is being offered with the intent to influence/bias his/her decisions,**
- **induces his/her disclosure of confidential information acquired in his/her position, or,**
- **induces his/her exercise of official powers or duties in favor of another.**

General Information

Relationships and transactions between academic medical institutions and industry are common and sometimes complex. Often, faculty and employees solicit or are offered "free" goods, gifts, benefits, or grants for teaching or research programs, honoraria, or travel expenses for participating in certain activities, actions, or projects. Many such gifts or benefits serve an important and socially beneficial function. However, proposed gifts or benefits may violate the federal Anti-Kickback Statute, the federal anti-referral laws, and similar state laws including felony criminal statutes, and may result in significant fines, possible imprisonment, and exclusion from federal and state reimbursement programs; such gifts should not be accepted.

The Federal Anti-Kickback Statute prohibits the knowing and willful solicitation or receipt, offer or payment, overtly or covertly, directly or indirectly, of any remuneration (anything of value) in cash or in kind in return for patient, product, or service referrals, or to induce such referrals. The statute has been interpreted to mean that if even one purpose of the transaction is to induce referrals it is a violation of the statute even if it is not the

General Information (cont'd)

sole purpose of the transaction. Generally, a gift may be considered improper if it is made to a person in a position to generate business for the paying party, if the payment is related to the volume of business generated, if the payment is more than nominal in value and/or exceeds fair market value of any legitimate service rendered to the payer, or if the payment is unrelated to any service at all other than referral of patients.

This policy is intended to provide guidance to faculty, employees, students, departments, and other UTMB entities concerning practices that are acceptable under the laws and practices that are clearly violations of the laws. Also, this policy provides a process for faculty, employees, students, departments, and other UTMB entities to submit proposed gift or benefit transactions with vendors for review for compliance with all applicable anti-kickback and anti-referral laws.

This general policy is in addition to various state and federal laws including *Standards of Conduct and Conflict of Interest, Tex. Government code Sec. 572, Offenses Against Public Administration, Tex. Penal Code Title 8*, and the *UT System Ethics Policies and Guidelines*, and the AMA Gifts to Physicians from Industry guidelines.

Definitions

***Gift:* A benefit which may include, but are not limited to, the following: cash, checks, securities, subsidies, real property, personal property, referrals, offerings, goods, honoraria, favors, prizes, services, employment, business or professional activities, membership, travel expenses, and compensation.**

***Benefit:* Anything reasonably regarded as monetary gain or monetary advantage, including benefits to any other person in whose welfare the beneficiary has a direct and substantial interest.**

***Community-wide Fund Raising Effort*: An institutional fund raising event sponsored and organized through the Office of University Advancement. Solicitations must be made to all vendors in the community and not only to vendors currently**

Definitions, continued

serving UTMB.
Vendor: Any individual or company that sells goods and/or services to UTMB. For the purposes of this policy it includes entities that have sold, are selling, or may sell goods and/or services to UTMB.

Gifts from Industry to Underwrite Costs of Educational Conferences or Events

Gifts, benefits, or subsidies from industry to underwrite the costs of educational conferences or professional meetings may be accepted if the subsidy is accepted by a UTMB Department, Center, School, Institute or a UTMB Office of Continuing Education as the conference's sponsor, who in turn uses the money to reduce the conference's registration fee. The subsidy should never be accepted directly by a UTMB faculty member, employee, or student either involved with or attending the conference or meeting. Also, if a vendor subsidizes an educational conference or lecture the responsibility for and control over the selection of content, faculty, educational methods, and materials must belong to the organizer of the conference or lectures.

Gifts from Vendors to Students, Fellows, and Residents

Gifts or benefits from vendors into a special educational fund or scholarship may be accepted, if approved by the appropriate Medical Education Program Director or Dean, to support students, residents, and fellows to attend carefully selected educational conferences or permit them to take time away from training to do research if the selections of students, residents, or fellows who receive the funds are made by UTMB personnel. Carefully selected educational conferences are generally defined as the major educational, scientific or policy making meetings of national, regional, or specialty medical, nursing, or health associations or courses given by visiting professors or faculty recognized as experts in their field. *Inappropriate educational conferences are conferences that address only a vendor's product or group of products.* This policy is not intended to discourage attendance at conferences or meetings that address only a vendor's product or group of products, only to prohibit accepting gifts or benefits from the vendor to attend such conferences or meetings.

Gifts from Vendors to Faculty, Employees, Departments, and Other Entities

Faculty members, employees, departments, and other UTMB entities may not accept vendor gifts to attend entertainment events, sporting events, all expense paid trips to vacation resorts, etc. that serve no bona fide academic or educational purpose.

Gifts, grants, or benefits may not be accepted by any faculty member, employee, department or other UTMB entity for any reason from any UTMB vendor if the faculty member, employee, department or other UTMB entity has or may have a substantive role in the determination of vendor selection and if such a gift or benefit might be perceived as influencing the vendor selection.

Monies, Goods, or Equipment from Vendors to Specified Faculty or to Departments to Fund Faculty Research or Education

- **Gifts from vendors to support research or education may be accepted *only* if the donation is accompanied with a letter or other instrument from the vendor indicating that the specific purpose of the donation is to support UTMB research or education and is not intended to influence purchasing decisions or research outcomes. The donation must be approved by the appropriate Dean of the faculty member and must be accepted by the Office of University Advancement. This policy does not prohibit grants and/or contracts from vendors for research or clinical trials where a formal agreement exists.**

- **Gifts or benefits given to faculty members or employees as a grant for studies of products when the studies require little or no actual scientific pursuit should not be accepted. An example is a payment given as a "research grant" to a faculty member for minimal record keeping tasks.**

Gifts for Travel, Lodging, or Meal Expenses

- **Faculty members or employees may accept from vendors reasonable honoraria and reimbursement for travel, lodging, and meal expenses to attend conferences or meetings *only* if the faculty member lectures, presents posters, presents a paper, participates in a panel**

Gifts from Vendors to Faculty, Employees, Departments, and Other Entities (cont'd)

discussion, moderates a panel, or performs in other substantive educational roles at the conference or meeting. Faculty members who are only attendees at conferences cannot accept either honoraria or reimbursement for travel, lodging, and meal expenses.

Gifts for Travel, Lodging, or Meal Expenses, continued

- **Faculty members or employees may accept vendor reimbursement to attend meetings to act as consultants or participate in panels regarding development of new clinical trial protocols, to discuss clinical trial research results, or to participate in a conference to understand requirements for future clinical trials.**
- **No UTMB faculty member, employee, department, or other entity may accept reimbursement for travel from any vendor if the purpose of the travel is to view or assess a piece of equipment or other product under consideration for possible purchase by UTMB.**

Gifts in Return for Prescribing or Advocating Products

- **Any gift or benefit offered to a faculty member, employee, department, or other UTMB entity in exchange for, or based on, prescribing or providing specific services or products is a violation of the Anti-Kickback Statute and cannot be accepted.**

Gifts Related to Marketing of Products

- **Faculty members and employees should not accept gifts or benefits offered in exchange for performing marketing tasks in the course of practicing medicine or providing research and development services. An example is accepting money or gifts from a vendor to render an evaluation of a company's product after using the product by completing evaluation forms.**

Gifts Valued at $50 or Less

UTMB faculty members and employees may accept gifts or benefits from vendors if the value of the gift or benefit *is*

Gifts from Vendors to Faculty, Employees, Departments, and Other Entities (cont'd)

***not greater than $50, per person per day*; is related to a bona fide academic or educational purpose; and is not in the form of cash, checks, or negotiable instruments. This includes food** provided by vendors at meetings held within the institution and to UTMB personnel. A department faculty member or **appropriate UTMB agent should also be present at any meeting or luncheon hosted by a vendor if a vendor representative makes a presentation at the meeting or luncheon.**

Solicitation of Gifts or Benefits

Community Fund Raising Events

- **Gifts in amounts greater than $50, per person per day may be solicited from vendors only if such solicitations are for an academic or educational event sponsored by a UTMB department or UTMB entity and the solicitations are part of a community-wide fund raising effort. The vendor's response to the solicitation must be voluntary and not motivated by an intent to induce referrals or to induce purchase of the vendor's products or services. Solicitation must not be limited only to those vendors providing services to UTMB.**
- **Faculty members, employees, students, departments, and other UTMB entities should not solicit any gifts of any type greater than $50, per person per day, for any purpose except a bona fide academic or educational event.**

Review of Vendor Offers or Invitations

A faculty member or employee who receives an invitation or offer of a gift or benefit from a vendor and is not sure that the offer is acceptable under this policy should disclose the situation, in writing, to his/her supervisor. The supervisor should make a decision concerning the acceptance of the gift or benefit. The faculty member or employee may appeal the supervisor's decision to the Institutional Conflict of Interest Committee. The Institutional Conflict of Interest Committee will determine whether the offer is legal and may be accepted and will provide a written response to the faculty member or employee expeditiously.

Violations

Violations of this policy will follow disciplinary action outlined in the UTMB Institutional Handbook of Operating Procedures manual.

References

- Social Security Act 1128B9B); 42 U.S.C. 1320a-7b(b) (as modified by Health Insurance Portability and Accountability Act of 1996), Pub. L. No. 104-191, tit. II 204, 110 Stat. 1036, 1999 (1996)
- 42 U.S.C. § §1320a-7b(b)(2)(B), 1395nn(h)(6)
- Texas Penal Code §§ 36.02, 36.10