



**CONFLICT OF INTEREST**

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**INTRODUCTION**

Conflict of interest laws and rules are designed to prohibit public employees and public officials from personally benefitting at the expense of the public interest. There are different conflict of interest statutes and rules that are addressed in this policy.

The Political Reform Act of 1974 (Government Code §81000 *et seq.*) (“PRA” or “the Act”) is the principal conflict of interest law and is the authority for the Alameda Health System (AHS) Conflict of Interest code and there are a number of other conflict restrictions with which AHS public officials should be familiar. All flow from the basic premise that it is a violation of the public trust for public officials to be benefit personally from their public positions.

**POLICY**

This policy shall constitute the Alameda Health System Conflict of Interest Code and incorporates by reference applicable provisions of the Political Reform Act (Government Code §81000 *et seq.*), Government Code Section 1090, and regulations of the Fair Political Practices Commission. Officers (including members of the governing board), employees, contractors, representatives, or agents AHS shall not:

- use their official position for personal gain or benefit (including gain or benefit to their family members or members of their household) or
- engage in conduct that creates the appearance that the person has used or is using their official position for personal gain or benefit (including benefit to their family members or members of their household).

**DEFINITIONS**

**Conflict of interest form:** Statement of Economic Interest form required to be filed pursuant to Government Code §----; otherwise referred to as the Form 700.

**Designated filer:** Public official required to file a Form 700 (Statement of Economic Interest).

**Fair Political Practices Commission (FPPC):** The state agency responsible for enforcing the PRA and authorized to interpret the PRA.

**Form 700 Policy:** The policy titled: CONFLICT OF INTEREST (Leadership – Form 700 Requirement).

**Public officials:** Officers (including members of the governing board), employees, contractors, representatives, or agents AHS.

### **POLITICAL REFORM ACT OF 1974**

The PRA contains a general prohibition against conflicts of interest in public decision-making, as well as a provision for the adoption of an AHS conflict of interest code. It prevails over any other conflict of interest law to the contrary. (Government Code §81013) The restrictions of the Act apply to all AHS public officials; without regard to whether they are required to file an annual conflict of interest form.

#### **The General Prohibition**

“No public employee at any level of state or local government shall make, participate in making or in any way attempt to use this or her official position to influence a governmental (AHS) decision in which they know or have reason to know they have financial interest.” (Government Code §87100) Any person who willfully violates the general prohibition is guilty of a misdemeanor. (Government Code §91000) This prohibition applies to all AHS public officials.

#### **Conflicting Personal Financial Interests**

##### **1. Personal Finances**

A personal financial interest extends beyond the public official’s own finances or investments. A public official has a personal financial interest in an AHS decision if it is reasonably foreseeable that the decision will have a material financial effect on the public official or a member of their immediate family, in any one of the five economic interests. Government Code §87103.

##### **2. Five Economic Interests**

- a. Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more, including ownership of stock by the public official or the public official’s spouse or dependent child.
- b. Any real property in which the public official has a direct or indirect interest worth \$2,000 or more. The public official’s home is not included in this calculation, but any other investment property would be.

- c. Any source of income that provides \$500 or more in value promised to, or received by, the public official within 12 months prior to the time when the decision is made.
- d. Any business entity in which the public official is a director, officer, partner, trustee, public official, or holds any position of management.
- e. Any donor of, a gift or gifts totaling \$500 or more, received, or promised to the public official within 12 months prior to the decision being made. Meals, travel costs, or anything else of value are included in the \$500. (This amount is tied to a consumer price index and is occasionally adjusted.)

### 3. When Disqualification is Required

If it is foreseeable the public official will be involved or influence an AHS decision that will affect any of these five kinds of economic interests, the public official has a conflict of interest. The FPPC has provided an analysis to determine when a public official has a conflict of interest that would require the public official to be disqualified from being part of the decision-making process. For assistance with this analysis with respect to a particular decision, please contact the AHS General Counsel or the FPPC helpline (866-ASK-FPPC).

Where a conflict of interest exists, the public official must publicly announce the financial interest creating the conflict, and must also disqualify themselves from involvement in the decision.

Even where the specific criteria is not met and a true conflict of interest does not exist, AHS public officials should be sensitive to the appearance of conflict, and should carefully consider whether to participate in a decision-making process whenever they have any financial interest at stake.

The disqualification rule applies to AHS public officials – regardless of whether they file a Form 700.

### AHS Disclosure of Interests – Form 700

Under the Form 700 Policy (see “Definitions” above), certain public officials are required to file an annual disclosure form. These officials – designated filers – are determined based on the likelihood that they are involved in AHS decision making where potential conflicts of interest may be present. The purpose of the Form 700 form is to inform AHS and the public of potential conflicts of interest and situations where disqualification is necessary or mandated.

Every public official in a position designated by the Form 700 Policy must complete an annual statement of economic interests. A list of designated positions is published by the AHS every year, and the Form 700 Policy is occasionally amended to reflect changes in position names and decision-making authority.

AHS currently assigns the same disclosure category or categories to each designated public official position. However, in the future disclosure categories may vary depending on the level of the position and the likelihood that the person holding it will be drawn into particular conflict situations. The disclosure categories identify the kinds of personal economic interests which the public official must disclose. Each public official in a position designated by the code will receive a Form 700 every year and a cover letter that identifies their specific disclosure categories.

The Form 700 is filed with the Clerk of the Board of Trustees on April 1<sup>st</sup> of each year and is a public document. In addition to the annual filing, the Form 700 is also required to be filed when the public official first comes into a designated position, and when the public official leaves a designated position. There is a \$10 per day late fine for each day after April 1 that the Form 700 is not on file, extending up to a maximum fine of \$100. All Form 700s are kept for seven years and are open to public inspection.

#### Ethics Training

Pursuant to the PRA, FPPC regulations and AB 1234, public officials in the following positions are required to participate in conflict of interest ethics training every two years:

- Members of the governing board.
- Employees at “director” level or higher.
- Officers of the medical staff.
- Department chairs (medical staff).
- Contractors assigned to any of the foregoing positions.

The Certificate of Completion for the AB 1234 training must be submitted to the Clerk of the Board by December 1, 2020 and subsequently by April 1<sup>st</sup> in even numbered years. New filers must complete the training and submit the certificate of completion within 30 days of their appointment. All AB 1234 Completion Certificates are kept for seven years and are open to public inspection.

#### Restrictions Regarding Honoraria, Gifts and Travel

Pursuant to the PRA and as set forth in this policy, public officials of AHS shall not accept any honoraria and/or gifts totaling over \$500 in any calendar year. (Government Code §89500 *et seq.*, 2 California Code of Regulations (“CCR”) ¶18730).

##### a. Honoraria Prohibition: Speeches, Publications, Conferences, etc.

With limited exception, a public official in a position designated by the Form 700 Policy cannot accept payment for a speech, publishing an article, serving as an emcee or simply participating in a conference, meeting, event or other gathering, from a source that they have or will be required to disclose on their Form 700. The exceptions to the honoraria prohibition are:

- i. Payment for transportation, food, and necessary lodging for giving a speech, participating in a seminar, or serving on a panel within California.
- ii. Payments made as part of separate, non-AHS employment.

- iii. Under certain circumstances, the return, donation or reimbursement of an honorarium. See 2 CCR ¶18930 et seq.
- iv. Honorarium payments can always be made to AHS without raising a conflict issue if (1) the donation is made directly to AHS; (2) the public official does not make the donation a condition of their speech, article, or attendance; (3) the public official does not claim a deduction for the donation; and (4) the public official is not identified in connection with the donation. Of course, speeches can be given at any event for free.

b. Prohibition on Gifts

An AHS public official may not accept gifts worth more than \$500 in a calendar year from a source that they have been or will be required to disclose on their Form 700. The reported value of a gift is the fair market value on the date it was received. Frequently the donor is the only source that can provide information as to fair market value and must be consulted. (The \$500 amount will also be adjusted in future years for changes in the cost of living. Gifts given to AHS or even to another member of the public official's family in circumstances where the public official is not in control of the gift do not violate this prohibition. If the value of a gift or gifts exceeds \$50, it must be reported on the public official's Form 700. It makes no difference that the public official transfers the gift to another public official. A public official may, within 30 days of receipt of a gift, return that gift to the donor, reimburse the donor, reimburse the donor for the cost, or donate the gift unused to a public entity or to a charitable organization without taking a tax deduction, to avoid violation of the prohibition on gifts. 2 CCR ¶18940, et seq.

c. Travel Payments

Payment of travel costs for AHS public officials by another party constitutes a gift. The public official must disclose the cost of gifted travel worth \$50 or more on their Form 700, and cannot receive within twelve months travel gifts worth more than \$500. Before accepting any travel gift, public officials should carefully consider whether doing so will result in disqualification from participating in an important decision involving the donor. Air transportation is valued as follows:

- i. Commercial Aircraft: the value is the actual cost of the ticket.
- ii. Private Aircraft: the value is determined by taking the fair market value of the normal charter fare or rental charge for a comparable plane, divided by the number of designated public officials or public officials who shared the flight.
- iii. The actual cost of any other benefit provided to the public official on the flight including food, beverages, or entertainment is treated as a separate gift unless the benefit is included as part of the fare.
- iv. Travel is not regarded as a gift to the public official and is not limited by the \$500 gift restriction in the following circumstances:
  - Where an AHS public official gives a speech, participates in a panel or provides a similar service within California.
  - Where an AHS public official gives a speech, participates in a panel or provides a similar service outside of California but within the United States, that is reasonably related to a legislative or governmental

purpose or an issue of public policy. Out of state travel must be reported on the Form 700.

d. Gifts to AHS – Not The Individual

There are limited circumstances where gifts that afford a personal benefit to an AHS public official can be considered a gift to the AHS, and therefore need not be reported on the public official's Form 700. Mostly, these are travel gifts, including accommodations and food associated with the travel. To qualify as a gift to the AHS, the following strict statutory requirements must be met:

- i. The travel payment must be pre-approved in writing by the hospital representative appointed to handle such gifts;
- ii. The designated hospital representative must receive and control the gift and make the determination of which AHS public officials will travel. The donor may not designate by name, title, class or otherwise who will travel or otherwise use the gift;
- iii. The travel must be for official AHS business; and
- iv. AHS must report the payment to the FPPC on a Form 801, and post it on the AHS website within 30 days of receipt or use.

Failure to comply with any of these requirements will result in the gift being classified as personal to the individual who traveled, and reportable on their Form 700. Travel payments are limited to the amount of AHS' own reimbursement rates. If the cost of travel exceeds this rate, the difference is considered a gift to the public official and, if over \$50 is reportable on the public official's Form 700.

e. Tickets and Passes to Events

There are circumstances where receiving a ticket or pass does not result in a gift to the public official and need not be reported on the public official's Form 700. A ticket or pass is not a gift to the public official where:

- i. The ticket or pass is provided by a source for which the public official performs a ceremonial role or function or behalf of AHS; or
- ii. AHS gives the public official a ticket or pass provided by a third party, and (a) the recipient is not identified by the third party; (b) the AHS determines who will use the ticket; and (c) the distribution of the ticket complies with AHS' policy; or
- iii. When AHS receives the ticket (a) pursuant to a contract for use of its property, (b) because AHS controls the event or (c) AHS purchases the tickets at fair market value and the distribution complies with AHS' policy.

AHS must report these tickets or passes to the FPPC on a Form 802k, and post it on the AHS website within 30 days after the distribution. Failure to comply with this requirement will result in the ticket or pass being classified as personal to the individual and reportable on their Form 700.

f. Tickets to Nonprofit and Political Fundraising Events

An AHS public official may accept for their personal use a single ticket or other admission privilege to a fundraising event for a nonprofit or political organization as follows:

- i. 501(c)(3) Organization Fundraiser: the 501(c)(3) organization may provide one ticket per event and the ticket is deemed to have no value so long as the

cumulative value of the non-deductible portion of the ticket(s) does not exceed the gift limit.

- ii. Political Fundraiser: the committee or candidate may provide one ticket to the event and the ticket is deemed to have no value.
- iii. Other Nonprofit Fundraiser: the value is the face value of the ticket less the amount donated to the organization. If no face value is listed, the gift is the pro rata share of the cost of the food and beverage, plus the cost of any items given to the attendees.

### **ENFORCEMENT OF THE CONFLICT OF INTEREST CODE**

Violations of this Conflict of Interest Code are punishable by disciplinary action (Government Code §91003.5), civil action (§91004 et seq.) and criminal prosecution (§91000).

### **OTHER CONFLICT OF INTEREST LAWS/RULES**

#### Contracts - Government Code Section 1090 et. Seq.

Government Code section 1090 is an early California statute that strictly prohibits AHS public officials from having a personal financial interest in any AHS contract. Section 1090 voids any contract where the AHS public official has any personal financial interest in the contract where the AHS public official has any personal financial interest in the contract, including being an officer, public official, agent, attorney, broker, supplier, landlord, or tenant of the contracting party:

“However diverse and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and the connection made, [section 1090 is violated].” *People v. Daysher* 2 Cal.2d 141, 146 (1934); *People v. Honig*, 48 Cal. App. 4<sup>th</sup> 289, 315 (1996).

In *Thompson v. Call*, 38 Cal.3d 633 (1985), the California Supreme Court stated that the purpose of this statute is to make certain that “every public officer [is] guided solely by the public interest.” The statute therefore targets the **appearance** of conflict in addition to actual conflicts of interests:

“It follows from the goals of eliminating temptation, avoiding the appearance of impropriety, and assuring the [public] of the [public] officer’s undivided and uncompromised allegiance that the violation of section 1090 cannot turn on the question of whether actual fraud or dishonesty was involved. Nor is an actual loss to the ...public agency necessary for a section 1090 violation.” (Id. At 648)

The “making of a contract” under this statute can include preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and solicitation of bids, in addition to the actual formation of a contract. *Millbrae Ass’n for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222, 237 (1968); 77 Ops.CalAtty.Gen 112 (1994)



The reach of this statute is very broad and the consequences draconian. It is not enough for an AHS public official to disqualify themselves from the decision – making process. *See, Thompson*, 38 Cal, 3d 633; *Stigall v. City of Taft*, 58 Cal. 2d 565, 569 (1962). The contract is still void and the public official is subject to disciplinary, civil and criminal consequences.

#### Gift of Public Funds

California Constitution, Article 16, Section 6 prohibits making gifts of any public funds. The state must receive commensurate value whenever its resources are used, including time, equipment, materials, supplies and facilities.

Government Code Section 8314 additionally prohibits the use of state resources for non – state purposes, except uses that are “incidental and minimal” (e.g. de minimis personal telephone or photo copy use).

#### Salary as Compensation in Full

California Constitution Article 4, section 17 prohibits the payment of bonuses or other forms of extra compensation to a public official after service has been rendered. A similar restriction for state appointed officers exists in Government Code Section 18000 which states: “[t]he salary fixed by law...is compensation in full for that office and for all services rendered in any official capacity or employment whatsoever...” Neither section prohibits the identification of incentive awards prior to performing a government service.

#### Consulting Into Another Contract

A consulting services contractor may not bid on a contract for services, goods, or supplies “that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.” (Public Contracting Code 10830)

This prohibition does not apply to architectural, landscape architectural, engineering, environmental, land surveying, or consultation project management firms. (Government Code §4525)

#### Legislator or Federal Officer May Not Also be an AHS Public Official

California Constitution Article 4, Section 13 forbids California legislators from holding any other State office or employment. Article 7, Section 7 forbids paid federal officers from simultaneously being paid State officers, except for limited military service.

#### Incompatibility of Public Offices

California courts have determined that a public officer may not accept a second public office with duties that potentially overlap and/or significantly clash with duties of the first office. The two positions are incompatible, will result in the automatic vacation of the first office. *Chapman v. Rapsey*, 16 Cal. 2d 636, 641–644 (1940); *People v. Santa Clara*, 49 Cal. App. 4<sup>th</sup> 1471, 1481, 1490 (1996); 87 Ops.Cal.Atty.Gen. 153 (2004); 78 Ops.Cal.Atty.Gen. 316 (1995).

Federal Lobbying and Ethics

AHS and AHS public officials are subject to a detailed set of restrictions under the Lobbying Disclosure Act for gifts and travel provided to members of Congress or their staff. These restrictions are set forth in the ethics rules of the House and Senate. As a general rule, AHS may not provide any gifts, including food or travel, to members of Congress and their staff, unless a specific exception applies (e.g., items of nominal value, such as t-shirts, baseball caps, greeting cards, and commemorative plaques or trophies).

Knowing violation of these rules can result in civil or criminal penalties.

The Lobbying Disclosure Act also requires AHS to file a quarterly “lobbying activities” report and a semi-annual report of certain contributions.

**CONCLUSION**

Even where conflicts of interest are not defined in specific statutes, they have been condemned by the courts as violative of the public trust:

A public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated...to discharge their responsibilities with integrity and fidelity. They may not exploit or prostitute their official position for their private benefits. When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in the, and the public is injured by being deprived of their loyal and honest services. *Terry v. Bender*, 143 Cal.App.2d 198,206 (1956)

AHS public officials need to be vigilant about conflicts of interest and guided by the overarching principle that they may not derive personal benefit in any way from their employment.

AHS’ General Counsel is available to respond to specific questions.

**APPROVALS**

		<b>System</b>	<b>Alameda</b>	<b>AHS/Highland/John George/San Leandro</b>
<b>Department</b>	<b>Date:</b>	N/A	06/2020	06/2020
<b>Pharmacy and Therapeutics (P&amp;T)</b>	<b>Date:</b>	N/A	N/A	N/A
<b>Clinical Practice Council (CPC)</b>	<b>Date:</b>	N/A	N/A	N/A
<b>Medical Executive Committee</b>	<b>Date:</b>	N/A	N/A	N/A
<b>Board of Trustees</b>	<b>Date:</b>	07/2020	N/A	N/A