

# PRACTICAL ETHICS GUIDANCE FOR BSA MEMBERS

Nancy O'Hanlon  
Deputy Ethics Counselor, NCI



# GENERAL WAIVER



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health  
National Cancer Institute  
Bethesda, Maryland 20892

Date: October 25, 2012

TO: Nancy O'Hanlon, Deputy Ethics Counselor, NCI

FROM: Paulette S. Gray, Ph.D., Executive Secretary, Board of Scientific Advisors

SUBJECT: Conflict of Interest Waiver for Dr. John Doe, Ph.D.

I am writing to request a waiver for Dr. John Doe, a member of the Board of Scientific Advisors (SAB), from the conflict of interest prohibitions of 18 U.S.C. §208(a). Waivers under Section 208(b)(3) may be granted by the appointing official where "the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved" and where the individual has made a disclosure of the financial interests at issue. The Office of the General Counsel has determined that you are the appointing official for purposes of Section 208 in accordance with Executive Order 12731 Section 401. Therefore, you have the authority to grant Dr. Doe a waiver under Section 208(b)(3).

Section 208(a) prohibits Federal Executive Branch employees, including Special Government Employees, from participating personally and substantially in particular matters in which any of the following individuals or organizations has a financial interest: (1) the employee; (2) the employee's spouse; (3) the employee's minor child; (4) an organization in which the employee

# RECUSAL

## RECUSAL LIST

Updated as of: 10/4/2012

NAME OF MEMBER: John Doe, Ph.D.

ADVISORY COMMITTEE: Board of Scientific Advisors

By law, you are prohibited from participating in Board discussions or actions on or relating to any specific party matter involving or affecting any of the following entities:

### *FINANCIAL INTERESTS:*

Name of Entity	Nature of Interest/Relationship	Recusal Expiration Date
Roche	Investment Interest	
American Association for Cancer Research	Board of Directors	
Massachusetts General Hospital / Partners Healthcare	Secondary Employment	
Harvard	Primary Employment	

### *COVERED RELATIONSHIPS:*

Name of Entity	Nature of Interest/Relationship	Recusal Expiration Date
Varian Medical Systems	Scientific Advisory Board	
Cornell University	Spouse's Employment	
University of Texas	Speaking Honorarium	12/31/2012

# Conflict of Interest Provisions

- 18 U.S.C. § 208
  - Criminal Statute
- 5 C.F.R. § 2635.502
  - OGE Regulation

# 18 U.S.C. § 208

## MAY NOT:

- “personally and substantially participate”
- in a “particular matter”
- in which you have a personal or imputed financial interest
- if the matter will have a “direct and predictable effect” on that interest

# Particular Matters

Two categories of matters:

- Matters involving specific parties
- Matters that do not involve specific parties but focus on the interests of a discrete and identifiable class of persons

# Imputed Interests

- Spouse
- Minor Child
- General partner
- Organization in which one serves as an officer, director, trustee, general partner or employee
- Organization with whom one is negotiating for employment or has an arrangement for future employment

# 5 C.F.R. § 2635.502

## Appearance Issue

- Should not participate
- In a specific party matter –
  - If the matter will affect the interests of a household member or close relative, OR
  - If you have a covered relationship with a party to the matter (or the party's agent or attorney)

# Covered Relationships

- An entity (other than a prospective employer) with which you have or seek a business, financial or other contractual relationship (e.g. funding sources, award sources)
- The interests of a member of your household or a close relative
- An entity which your parent, spouse or child is seeking to serve as officer, director, trustee, general partner, employee, agent, attorney, consultant or contractor
- Any entity you have served within the last year as officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor or speaker
- Any organization in which you're actively involved

# Interests of Concern

- Employment, agreements
- Service as an officer, director, or trustee
- Business partnerships
- Stocks, bonds, sector funds, options, retirement plans/accounts, debt
- Grant funding
- Consulting
- Paid speaking engagements

# Other Rules

- Gifts – given to influence you as a Board member, or solely because you are a Board member are generally prohibited
- Testimony – need agency permission before testifying as expert for another in matter in which you participated as a Board member
- Charity – can't use title or position, and can't solicit from entity having interests that could be substantially affected by Board activities
- Foreign gifts  $\leq$  \$350 or decorations

# Lobbying / Politics

- Appropriated funds cannot be used to “lobby” Congress or encourage others to do so
- The Hatch Act restricts the “political” activities of Board members while you are engaged in the performance of official Government business