

AMERICAN CANCER SOCIETY, INC. AND ITS AFFILIATED ENTITIES

CONFLICT OF INTEREST POLICY

(as of November 6, 2019)

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**CONFLICT OF INTEREST POLICY
AMERICAN CANCER SOCIETY, INC. AND ITS AFFILIATED ENTITIES**

Introduction and Applicability

The Conflict of Interest Policy (the “Policy”) of the American Cancer Society, Inc. and its affiliated entities (collectively, the “Society”) establishes the standards for identifying and handling potential conflicts of interest for all staff and all individuals with a fiduciary obligation to the Society, including but not limited to, members of the Board of Directors (collectively referred to as “associates”).¹ Conflicts of interest will arise in the normal course of conducting Society business. The Policy is not designed to prohibit conflicts of interest, but to protect the Society when it is contemplating entering into a transaction or arrangement that might benefit the private interests of an associate, might result in a “related party transaction” as defined in the New York Not-for-Profit Corporation Law, or might result in a possible “excess benefit transaction”, as defined under the Internal Revenue Code of 1986, as amended. The Policy is intended to supplement, but not replace, any applicable federal, state or local laws governing ethical conduct or conflicts of interest applicable to nonprofit and charitable organizations.

It is every associate’s responsibility to discharge his or her duties in a manner that promotes and preserves public trust, proper stewardship, and confidence in the integrity of the Society, and upholds the Society’s core values of integrity, compassion, courage, determination, and diversity. Associates must respect and comply with Society rules and regulations, observe high standards of conduct, and participate in establishing and maintaining such high standards. **Adverse consequences, including employee termination or removal of a volunteer from his or her position, can result from failure to comply with the Policy.**

It is the duty of all associates to review and assess their conduct in light of the provisions of the Policy. Each associate shall seek, either in writing or in person, the advice of his or her supervisor or Society Counsel when a reasonable doubt regarding an ethical or legal consideration arises.

The Conflict of Interest Disclosure Statement must be completed by all associates on at least an annual basis. Society Counsel will determine which individuals have a fiduciary obligation to the Society.

¹ For policies specifically related to the preservation of the integrity of the Society’s peer reviewed extramural research grants and the policies that pertain to conflicts of interest in editorial review and health guidelines development, please contact the Society’s National Vice President for Extramural Research.

I. Definitions

A. Affiliated Persons:

Persons termed “Affiliated Persons” include the following:

- a. An associate’s relatives.
- b. Any entity that deals with the Society of which:
 - (i) An associate is a board member, officer, partner, member, owner (i.e., holder of a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a 5% or greater direct or indirect ownership interest), or key person; or
 - (ii) An associate has any other position or interest, financial or otherwise, that would cause the appearance of a conflict of interest. Any question regarding a conflict of interest should be reviewed by Society Counsel or the Audit Committee for final resolution.
- c. Any trust, estate, or other legal entity in which an associate has a substantial beneficial interest or as to which an associate serves as a trustee or in a similar capacity.

B. Business Relationship:

Business Relationships between two parties include any of the following:

- a. One person is employed by the other in a sole proprietorship or by an organization with which the other is associated as a trustee, director, officer, key person, or greater-than-35% owner.
- b. One person is transacting business with the other (other than in the ordinary course of either party’s business on the same terms as are generally offered to the public), directly or indirectly, in one or more contracts of sale, lease, license, loan, performance of services, or other transaction involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the organization’s tax year. Indirect transactions are transactions with an organization with which the one person is associated as a trustee, director, officer, key person, or greater-than-35% owner. Such transactions do not include charitable contributions to tax-exempt organizations.
- c. The two persons are each a director, trustee, officer, or greater-than-10% owner in the same business or investment entity (but not in the same tax-exempt organization).

Ownership is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, membership interest in a nonprofit organization, or beneficial interest in a trust. Ownership includes indirect ownership (e.g., ownership in an entity that has ownership in the entity in question); there may be ownership through multiple tiers of entities.

Privileged relationship exception. For purposes of this definition, a “business relationship” does not include a relationship between an attorney and client, a medical professional (including psychologist) and patient, or a priest/clergy and penitent/communicant.

C. CEO-involved Transaction:

A “CEO-involved Transaction” is any transaction, agreement, or arrangement of the Society in which the (i) Chief Executive Officer, (ii) any entity in which the Chief

Executive Officer serves as a director, officer, or Key Person, or (iii) any entity in which the Chief Executive Officer has an ownership or benefit interest, has a Financial Interest.

D. Financial Interest:

A person has a Financial Interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the Society has a transaction or arrangement;
- b. A compensation arrangement with the Society or with any entity or individual with which the Society has a transaction or arrangement; or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Society is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not nominal in value. Compensation does not include the reimbursement of reasonable expenses incurred in connection with the performance of Society duties.

E. Gift:

A “Gift” is any payment or other benefit given to a staff member or volunteer because of their affiliation with the Society that is not in return for services and is valued at \$75 or more. Gifts may come in a variety of forms, including presents, gratuities, loans, entertainment, favors, or other hospitality. A series of benefits received within a 12-month period that together are valued at \$75 or more is treated as a single Gift for purposes of this policy.

F. Honorarium:

An “Honorarium” is a gift given to a staff member or volunteer for services for which no fee has been set or agreed upon in advance. Services include, but are not limited to, any speech given, article published, service on a review panel, or attendance at any conference, convention, meeting, social event, meal, or similar gathering. “Honorarium” does not include reimbursement of expenses for transportation, lodging, and meals in connection with a conference or similar event in which the staff member or volunteer renders services that are more than merely perfunctory.

Questions related to the receipt of honoraria should be directed to Society Counsel.

G. Key Person

A “Key Person” is any person, other than a director or officer, whether or not an employee of the Society, who (i) has responsibilities, or exercises power or influence over the Society as a whole similar to the responsibilities, power, or influence of directors and officers; (ii) manages the Society, or a segment of the Society that represents a substantial portion of the activities, assets, income or experience of the Society; or (iii) alone or with others controls or determines a substantial portion of the capital expenditures or operating budget of the Society.

H. Related Party:

A “Related Party” is: (1) any director, officer, or key person of the Society; (2) any relative of such director, officer, or key person; or (3) any entity in which any director, officer, key person, or their relatives have thirty-five percent (35%) or greater ownership or beneficial interest, or in the case of a

partnership or professional corporation, a direct or indirect ownership in excess of 5% .

I. Related Party Transaction:

A “Related Party Transaction” is any transaction, agreement or any other arrangement in which a Related Party has a Financial Interest and in which the Society is a participant. A transaction shall not be a Related Party Transaction if: (i) the Related Party’s Financial Interest is de minimis; (ii) the transaction is in the ordinary course of business, not typically subject to review, and on terms available to others; or (iii) the transaction benefits a Related Party solely as a member of a class of beneficiaries intended to benefit from the corporation’s mission, and the benefit is available to all similarly situated class members on the same terms.

J. Relative:

A “Relative” includes spouses, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren and great-grandchildren.

K. Society Counsel:

Society Counsel shall mean the Chief Legal and Risk Officer or his or her designees.

L. Tobacco Company:

“Tobacco Company” means any company that manufactures tobacco products and is commonly considered to be part of the tobacco industry, including subsidiaries and parent companies, and companies under common control with such company, as well as philanthropic foundations and other organizations closely linked with the tobacco industry.

II. Duty of Loyalty to the Society – Avoiding Abuses of Position and Conflicts of Interest

The Society is a nonprofit, tax-exempt organization. Maintenance of its tax-exempt status is critical both for its continued financial stability and for public support. The Society is subject to scrutiny by, and is held accountable to, governmental and regulatory authorities as well as the general public.

Consequently, there exists between the Society and its associates a fiduciary duty which carries with it a duty of loyalty. Associates have the responsibility of administering the affairs of the Society honestly and prudently and of exercising their best care, skill, and judgment for the sole benefit of the Society. Moreover, because of the Society's status as a public charity, every associate has an affirmative duty to act as a steward of the funds entrusted to the Society by its contributors.

Associates shall use the resources, property, and funds under their control judiciously and in the best interest of the Society. Associates shall exercise good faith in all transactions, and they shall not use Society assets or resources, their positions with the Society, or knowledge gained as a result of their positions for their personal benefit or for the private pecuniary benefit of any other person or organization. The interests of the Society must be the first priority in all decisions and actions associates undertake in connection with the Society.

No associate shall accept, solicit, or agree to accept, without the prior approval of his or her supervisor or Society Counsel, any Gift from which it might be reasonably inferred that such Gift was given or offered for the purpose of influencing the associate in the discharge of his or her duties. Vendor, grantee and partner selections must always be business or programmatic decisions based on merit by comparing and evaluating cost, quality, performance, and suitability. Decisions must not be influenced by any other factor, including Gifts, personal relationships or hospitality.

A. Circumstances that Constitute a Conflict of Interest – A conflict of interest may arise in any proposed transaction, investment, grant, arrangement, or any other activity in which: (i) one or more associates or Affiliated Persons would have a Financial Interest (including, without limitation, a Related Party Transaction) or (ii) there could be an actual or perceived conflict of interest for some other reason, including any transaction, investment, grant, arrangement, or any other activity in which the interests of an associate or an Affiliated Person competes or could be seen as competing with the interests of the Society.

B. Parties With Whom Conflicts May Arise – A conflict of interest may arise in the relations of associates with any of the following third parties:

Persons and firms supplying or *potentially* supplying goods and services to the Society

(vendors and professionals), including, but not limited to:

- Construction services.
- Professional services, including accounting and legal services.
- Contracts with individuals, including consultants and part-time staff.
- Contracts with *companies* providing non-professional services, such as

marketing,

research services, information technology, management consulting or other services, etc.

- Persons and firms from whom the Society purchases or leases property and equipment.
- Persons and firms with whom the Society is dealing or planning to deal in connection with the purchase or sale of real estate, securities, or other property.

- Persons or parties with a direct, material Financial Interest in the outcome of Society programs, policies or positions.

- Purchasers of Society Services.

- Donors, volunteers, and other supporters of the Society.

- Agencies, other nonprofits, and associations that affect the operations of, or partner with, the Society.

- Entities from whom the Society receives grants or to whom the Society provides grants.

- Tobacco Companies and their related entities.

C. Nature of Conflicting Interest - The following are examples of some common types of conflicting interests:

A Business Relationship or an association with any entity that deals with the Society of which an associate or an immediate family member is a partner or a controlling shareholder, executive officer, or has any other position with another entity that would reasonably cause the appearance of a conflict of interest.

Receiving compensation for services with respect to individual transactions involving the Society and a third party.

Using Society resources, time, personnel, equipment, supplies, or goodwill for any purpose other than Society-approved activities, programs, or purposes. (This includes circumstances leading to receipt of an Honorarium.)

Receiving allowances from the Society (other than incidental amounts incurred while traveling) if you are a director, volunteer, or officer of the Society.

Receiving any Gift from any of the third parties described in Section B which may give rise to the perception that the associate's independent judgment might be compromised.

D. Conflict of Interest Disclosure Procedures - The areas of conflicting interest listed in Section C, and the relationships in those areas that may give rise to conflicts, as listed in Section B, are not exhaustive. Conflicts may arise in other areas or through other relationships. The Policy does not prohibit transactions when a conflict of interest is present, but instead provides a framework for conflict transparency and management. If an

SOCIETY HOTLINE

1-800-539-7202

associate believes that he or she may have a conflict of interest with the Society, he or she should assume that a conflict does exist and act accordingly. Any questions about potential conflicts should be directed to Society Counsel. ***Any potential conflict of interest should be disclosed at the earliest possible time.***

The fact that one of the interests described in Section B or C exists does not necessarily mean that a conflict exists, or that the conflict, if it exists, is material enough to be of practical importance, or if material, that upon full disclosure of all relevant facts and circumstances, is necessarily adverse to the interests of the Society. However, it is the policy of the Society that the existence of any of the interests described in Section C or any other potential or actual conflict of interest must be disclosed before any transaction is consummated in order for the Society to properly assess the transaction and take steps to mitigate any potential adverse consequences of such conflict. Moreover, all disclosed conflicts shall be addressed in accordance with the procedures set forth below.

It shall be the continuing responsibility of associates to scrutinize their interests for potential conflicts and to immediately make any necessary disclosures. When a possible conflict arises, in addition to making the necessary disclosures, an associate should consider these questions:

Is the transaction prudent, in good faith, and in the best interest of the Society?

Would the Gift, Business Relationship, or Financial Interest affect any decision I will make for the Society?

How would the transaction, Gift, Business Relationship, or Financial Interest look to someone outside of the Society, such as a donor, a public watchdog group, the state attorney general, the news media, or a Congressional Committee?

How would the Gift, Business Relationship, or Financial Interest seem to others within the Society? Would they think it might affect how I do my job for the Society?

1. Initial Election to the Board of Directors

Prior to the initial election of any director, such director must complete, sign, and submit to Society Counsel a Conflict of Interest Disclosure Statement which identifies, to the best of the director's knowledge, any entity of which such director or an Affiliated Person is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee, and with which the Society has a relationship, and any transaction or potential transaction in which the Society is a participant and in which the director might have a conflicting interest. Society Counsel shall submit the Disclosure Statements from all directors to the Chair of the Audit Committee on an annual basis.

2. Annual Statements

Each associate shall annually complete, sign, and submit to Society Counsel a Conflict of Interest Disclosure Statement which identifies, to the best of the associate's knowledge, any entity of which such associate or an Affiliated Person is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee, and with which the Society has a relationship, and any transaction or potential transaction in which the Society is a participant and in which the associate might have a conflicting interest.

3. Continuing Disclosure

Except for the special case of disclosure of a Gift or an Honorarium, whenever an actual or potential conflict of interest arises, an associate must complete, sign and submit a Conflict of Interest Disclosure Statement to Society Counsel. If the associate is a Disqualified Person, he or she must disclose all material facts about the conflict to the Audit Committee prior to engaging in the proposed transaction or arrangement.

4. Gifts or Honoraria

Gifts

Staff members must immediately report the receipt of an offer of any Gift exceeding \$75 to their supervisor, who must consider the circumstances of the Gift and either approve or deny its acceptance in writing. Supervisors may seek advice from Society Counsel.

Volunteers must immediately report the receipt of an offer of any Gift exceeding \$75 to Society Counsel. In each instance, a statement should be filed with Society Counsel who will review the circumstances to determine if the potential Gift can be accepted. No Gift in excess of \$75 in value may be accepted without the prior approval of Society Counsel.

In international situations where turning down a Gift valued at more than \$75 would be culturally discourteous, the Gift may be accepted on behalf of the Society, but must be immediately reported to Society Counsel.

Honoraria

Any Honorarium received by a Society staff member or a volunteer who is representing the Society and/or acting in their official ACS capacity must be remitted to the Society to avoid any appearance of a conflict of interest. If remittance is not possible, then the Honorarium should be politely declined. Any exception to this policy must be approved in advance by Society Counsel.

If an ACS employee provides personal services that fall completely outside the scope of their official ACS capacity, then he or she may accept an honorarium, provided that there is no use or disclosure of any ACS proprietary, intellectual, or other material in the execution of the service, no representation or presentation as an ACS representative or spokesperson, manager approval, full, advance disclosure of the activity by submitting an updated Conflict of Interests Disclosure to the Office of Corporation Counsel, and use of PTO on the day such services are performed.

For additional information, staff members should refer to the Code of Ethics & Conflict of Interest Toolkit on the Office of Corporation Counsel's Legal for Me page located on Society Source.

E. Procedure for Reviewing Conflicting Interests

In general, once a transaction involving a conflicting interest is identified, the associate with the conflict shall not attempt to influence decision makers regarding the matter and shall not participate in any deliberations or voting on the conflict or the transaction; provided that the foregoing shall not prohibit such associate from responding to information

requests *prior to* the commencement of any deliberations or voting.

In the case of a proposed transaction involving a **Related Party Transaction** or a **CEO-involved Transaction**, the **Audit Committee** shall review the situation and determine by a majority vote of disinterested directors whether the transaction is in the Society's best interest, whether it is fair and reasonable, and whether to move forward despite the conflicting interest. The minutes of the meeting of the Audit Committee shall reflect that the conflict of interest was disclosed, that the interested person was not present during deliberations and voting on the matter, that the interested person did not vote, and record the Committee's decision. In addition, in the case of reviewing a Related Party Transaction in which a Related Party has *substantial* Financial Interest, the Audit Committee shall: (i) prior to entering into the transaction, consider alternative transactions to the extent available; (ii) approve the transaction by a majority of the Committee members present at the meeting; and (iii) contemporaneously document in writing the basis for the Committee's approval, including its consideration of any alternative transactions. If a transaction involving a Related Party Transaction or a CEO-involved Transaction arises that must be addressed prior to the next regularly scheduled Audit Committee meeting, the Chair of the Committee and Board Secretary/Treasurer shall review the situation, make a determination about whether the Society should move forward despite the conflicting interest, and report the decision to the Audit Committee for approval and ratification at its next meeting.

In the case of a transaction involving a conflict of interest by a member of the Senior Leadership Team of the Society (other than a Related Party Transaction or CEO-involved Transaction), the **Chief Executive Officer** (CEO) or his or her designees shall review the situation and determine whether it is in the Society's best interest, whether it is fair and reasonable, and whether to move forward despite the conflicting interest. The CEO or his or her designee shall maintain a record of all such transactions and update the Audit Committee at each of its regularly scheduled meetings about how each was resolved.

In the case of other transactions involving a conflict of interest by an associate, **Society Counsel** shall review the situation and determine whether it is in the Society's best interest, whether it is fair and reasonable, and whether to move forward despite the conflicting interest. Society Counsel shall maintain a record of all such transactions and update the Audit Committee at each of its regularly scheduled meetings about how each was resolved.

- F. Violations of the Conflict of Interest Policy** - If Society Counsel, the CEO or the Audit Committee has reasonable cause to believe an associate has failed to disclose an actual or possible conflict of interest, the associate shall be notified about such belief and afforded an opportunity to explain the alleged failure to disclose.

If, after reviewing the associate's response and after making further investigations as warranted by the circumstances, Society Counsel, the CEO or the Audit Committee determines the associate has failed to disclose an actual or possible conflict of interest, it shall initiate appropriate disciplinary and corrective action.

- G. Conduct Not Prohibited by This Policy** - This policy is not intended to preclude or dissuade employees from engaging in legally protected activities under state or federal law, including the National Labor Relations Act, such as discussing wages, benefits or terms and conditions of employment, raising complaints about working conditions for their and

their fellow employees' mutual aid or protection, or legally required activities.

III. Reporting Violations - Duties, Protections and Corrective Actions

- A. In addition to any other required reporting obligation, each associate shall immediately report to his or her supervisor or Society Counsel any suspected violations of the Policy, any federal, state or local law, or any attempt to induce a staff member or volunteer to violate the Policy or any federal, state or local law. An associate who does not disclose a potential conflict of interest in accordance with Section II. C. is in violation of the Policy. A failure to report a suspected violation is itself a violation of the Policy. If anonymity is requested, the Society will not disclose the identity of the reporting individual except as needed to properly investigate the allegation, or unless legally required to do so.

The Society's Whistleblower Protection Policy establishes the protection against retaliatory actions for any reports of actions or suspected actions taken by or within the Society that are illegal, fraudulent or in violation of any adopted Society policy, including the Policy. Moreover, the Society's independent hotline (1-800-539-7202) is a confidential resource dedicated solely to answering questions and concerns or reporting questionable activity related to financial internal controls, audit, prevention of illegal activity, accounting issues, and related matters. Associates may ensure complete anonymity when reporting a concern by simply not giving their names.

- B. An associate found to be in violation of the Policy shall be subject to corrective actions taken by the appropriate level manager (for staff) or the Board of Directors (for board members and other volunteers). Such action may include further training and instruction regarding the provisions of the Policy, taking steps to remediate any harm to the Society, fellow associates, or others, and disciplinary actions up to and including termination for staff or removal from the Board or applicable Society program for volunteers. Each violation will be assessed on an individual basis and the corrective action tailored to the specifics of that violation. When deciding what action is appropriate, consideration will be given to the flagrancy of the violation, the harm caused, whether the violation was intentional or unintentional, whether the associate voluntarily disclosed the violation, prior misconduct, the likelihood of future misconduct, the general circumstances surrounding the violation, and other considerations as appropriate.
- C. When an associate completes the annual Conflict of Interest Disclosure Statement, he or she must complete all of the items on the questionnaire. Any intentional or reckless failure to disclose required information or the provision of information that is inaccurate or false in nature is a violation of the Policy, and shall be subject to corrective action as described in this Section II. B. In addition, there is a continuing duty to disclose any conflict of interest that arises during the course of the year.

IV. Frequently Asked Questions

Society Counsel shall provide information about the application of this policy by maintaining a frequently asked questions site on the Society's intranet.