Industry Consulting Agreement FAQs

Because Baylor College of Medicine faculty members are thought and opinion leaders in their fields of research, companies will often seek to engage them in consulting relationships. The following questions frequently arise as faculty members consider becoming engaged as a consultant or an advisory board member to a for-profit company:

Where can I find information on college policy regarding consulting relationships, and what are my obligations?

Faculty consulting relationships fall under the purview of the BCM Corporate Compliance and Audit Services team. The college allows faculty to consult for for-profit companies with the understanding that there should be consistency between the faculty member’s consulting relationship and the college’s mission of applying science and discoveries to further education, healthcare, and community service locally and globally. The Compliance and Audit Services website has a link entitled: Addendum for consulting relationships, advisory boards and speaking engagements. You can find it here: https://intranet.bcm.edu/?fuseaction=home.showpage&tmp=/compliance-audit/pdfs/Addendum_to_Consulting_Agreement_11_25_2014

This link contains an addendum that must be attached to any consulting agreement signed by a faculty member and a for-profit company. Faculty who enter into consulting relationships should read and understand their obligations to the college under the Disclosure of Outside Interest policy, and should keep their disclosures current.

What are the potential conflicts associated with my consulting relationship, and how do I manage them?

There are two potential key sources of conflict associated with faculty consulting relationships:

- **Conflict of commitment:** Faculty can engage in consulting activities but only to the point that the time commitment associated with consulting activities does not exceed twenty percent (20%) of their total effort. Most faculty consulting relationships (service on a scientific advisory board, for example) will typically consume less time than this, with spurts of activity associated with company board meetings, etc.

- **Conflict with a faculty member’s academic research program:** This type of conflict is one that can prove to be challenging to manage. When a company reaches out to a BCM faculty member to enter into a consulting relationship, they are doing so because the faculty member possesses expertise in a particular focal area of research that is of interest to the company. In many cases, however, the company’s research interests may strongly align with the faculty member’s research interests. It is very important for the faculty member to understand and appreciate how their consulting activities can be kept separate and distinct from their academic research activities, and there should be clear differences between the two – they should not intermingle. Faculty members have obligations to the college, and to the third party sources of research
funding (federal grants and/or awards from non-profit foundations, etc.) that are used to support their research programs. Faculty should exercise care not to enter into any consulting relationship that could potentially run afoul of college policy, or place support of their academic research program in jeopardy.

What does the Addendum for Consulting Relationships say in plain English, and why is important that it be attached to my consulting agreement?

The purpose of the Addendum is to clarify the fact that, as a BCM faculty member with a primary employment relationship with the college, you are subject to college policies, including the Disclosure of Outside Interest policy. Additionally, the addendum clarifies the following:

- As a consultant, you will not disclose to the company any confidential information that is the property of the college. This includes data and information associated with your research program that has not been publicly disclosed.
- As a consultant, you will provide scientific and medical expertise related to the company’s existing products and services and that the services that you provide will not conflict with the scope of your research program at BCM.
- You will not engage in marketing the company’s products or services.
- You will not engage in the practice of medicine during your role as a consultant.
- You will not allow the company to use your image, or any logo or image owned by the college in any way that conveys an endorsement of the company’s products or services.
- The company shall gain no rights to any intellectual property that is owned by the college through the consulting relationship with you. This point is particularly important, because your consulting agreement will stipulate that the company will own any intellectual property that you develop that arises out of your role as a consultant for the company. Some consulting agreements will go so far as to state that if you inadvertently convey any rights to intellectual property that is owned by the college, the company will be automatically granted a non-exclusive license to that intellectual property. Provisions like this will not fly; as a consultant, you cannot convey rights to intellectual property that you do not own. As a consultant, it is very important that your consulting activities do not intermingle or intertwine with your academic research program.

Will the college help me negotiate my consulting agreement?

Faculty members should retain their own legal counsel to assist them with negotiation of their consulting agreement. The company will be represented by legal counsel during the agreement negotiation process, so it is important for the faculty member to be represented by legal counsel as well to keep the playing field level. Because the college is not a signatory to your consulting agreement, the college will not represent you in your negotiation with the company. Your legal counsel should have
experience working with faculty in an academic research institution, and they should be experienced in the negotiation of contracts. College personnel, including members of the Baylor Licensing Group, may provide you with advice about your consulting agreement, but this is not legal advice and is not a substitute for the advice that you will receive from your own attorney. College personnel are representatives of the college, are not responsible for representing a faculty member’s personal interests in a contract negotiation.