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**Understanding Government Ethics**

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Health care professionals are distinguished from other people by both specialized training and their special ethical obligations to patients. Ethics standards are not set down in a single document, but arise from a variety of sources including codes of ethics, professional guidelines, consensus statements, published scholarly literature, and organizational policies. Within VHA, the National Center for Ethics in Health Care handles professional ethical standards and issues in health care, including clinical, organizational, and research ethics.

By contrast, "Government ethics" rules are law, resulting from actions by Congress and the President, and they are published either as part of the criminal code or as standards of conduct regulations. The Federal criminal code sections applicable to Federal employees are generally contained in chapter 11 of Title 18 of the United States Code. The standards of conduct, published at Part 2635 of Title 5 of the Code of Federal Regulations, are issued by the Office of Government Ethics (OGE) under statute and Executive Order 12674 (1989), as amended in Executive Order 12731 (1990).

Under these regulations and the Ethics in Government Act of 1978, each agency has a "designated agency ethics official" (DAEO). As part of his or her general ethics program responsibilities, the DAEO is responsible for advising employees on the criminal code provisions and the standards of conduct, reviewing and certifying all mandatory financial disclosure filings, and providing mandatory ethics training. Under a recent memorandum of the VA Chief of Staff, the DAEO is also responsible for annual ethics training for all VA employees.

In VA, the DAEO is the Assistant General Counsel (023) in the Office of the General Counsel (OGC) in Washington, currently Walter A. Hall. The Associate General Counsel (023) serves as alternate DAEO (ADAEO), who, under the regulations, exercises the DAEO’s authorities in that person’s absence. Recently, the General Counsel created a pilot Ethics Specialty Team consisting of OGC ethics specialists and lawyers from around the country who are Deputy Ethics Officials and report to the DAEO and ADAEO through Don Mobly, the Team Leader. The expectation is that greater consistency and accuracy and better service will be obtained in VA when dedicated specialists practice Government ethics.

Government ethics and health care ethics differ in that Government ethics refers to a specific set of legal restrictions that apply to Federal employees, while health care ethics refers to the ethical responsibilities of such health care professionals as clinicians, administrators, and medical researchers. A person becomes subject to Government ethics by becoming a Government employee. Accordingly, health care professionals in VA are subject to health care ethics as a function of their professional roles and to Government ethics rules by virtue of their employment with the Federal Government.

While the consequences of health care ethics violations include censure by colleagues, license withdrawal, negligence litigation, suspension of clinical privileges, or other sanctions, Government ethics violations may result in disciplinary action, including removal from employment, and civil and criminal penalties, including imprisonment. Government ethics rules and health care ethics standards are similar, however, in that both are intended to encourage ethical behavior and help sustain public confidence. The following scenario illustrates how complicated these matters can become.

**Transaction Between a Government Physician and a Patient: Selling a Home**

The OGC Ethics Specialty Team recently wrote an opinion on whether a physician selling a house to a patient raises problems under Government ethics regulations or other legal standards.

Nothing in Government ethics rules specifically prohibits a sale that is clearly at arm’s length sale, i.e., one arranged through a real estate agent at the market price and financed by a mortgage lender at market rates. However, the transaction may

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involve details that implicate Government ethics rules. If the price is excessive, or if details of the financing favor the employee over the patient, the transaction may be determined to be a gift under the Government rules. Further, to the extent the sale involves any exploitation of the physician-patient relationship, the transaction may constitute the use of the physician's public office for private gain under Government rules. Such exploitation, moreover, may be a breach of professional ethics governing the physician-patient relationship.

Government Ethics Rules on Gifts from Outside Government

The Government rule on gifts, subject to certain exceptions, prohibits employees from accepting gifts from "prohibited sources," including entities doing or seeking official business or having interests affected by agency decisions. The rule prohibits soliciting gifts as well as accepting them. The rule also prohibits accepting gifts from the outside that have been given because of the employee's official position. A gift "because of position" is defined as one which "would not have been offered or given had the employee not held or his position as a Federal employee." There is no doubt that the Government gift rule regulates gifts between a patient and an employee, including an employee who is a physician. Because the standards of conduct define the term "gift" broadly, the Government gift rule may apply to a transaction such as the sale of a house by a physician-employee to a patient.

An Above-Market Price May Be Interpreted As a Gift

Unless one of the exceptions applies, the rules on gifts from outside Government apply to any excess in the price paid by the patient. An exception that may apply allows gifts from patients to employees where a long-term, personal relationship between the patient and employee exists independent of the donor's status as a patient.

The Potential for Disputes Indicates Caution

In addition, the possibility of litigation between buyer and seller should be considered. Whatever the price or financing details, any resulting dispute will give rise to a "covered relationship" for purposes of the Government standards of conduct rule against the "appearance of a conflict of interest." Depending on the status of the particular patient, the "appearance" rule might dictate that the physician cannot be involved in matters affecting the patient while any dispute is ongoing. Having to withdraw from treating the patient for such reasons may be against the best interests of the patient.

Government Ethics Implications of Exploitation of a Patient

Finally, the terms of the sale or the surrounding circumstances may give rise to concerns that the selling physician is exploiting the purchasing patient. If the physician is using the professional relationship with the patient as an advantage, the transaction may involve a use of the physician's public office for private gain, a prohibited activity under the standards of conduct. Such use of the professional relationship might also constitute a violation of the physician's professional standards.

Depending on the details, however, the sale of a house by a physician to a patient at arm's length would probably not breach Government ethics rules. If the transaction constitutes a gift to the employee or exploits the patient, it may violate Government ethics rules. In any transaction as variable and "fact-specific" as the sale of a house, advice on Government ethics rules, which is readily available, should be sought.

Getting Government Ethics Advice

Information on contacting a Government ethics official appears at the end of this article. The Federal ethics rules create a "safe harbor" that protects employees from Government disciplinary action for actions taken in compliance with advice from an agency ethics official. Following the advice of a Government ethics official also makes prosecution by the Department of Justice much less likely.

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The DAEO, ADAEO, and other Deputy Ethics Officials at VA Central Office may be contacted at GovernmentEthics@va.gov or (202) 461-1600 or (202) 461-7694

To contact a Deputy Ethics Official outside VA Central Office:

OGCNorthEastEthics@va.gov for ME, NH, VT, MA, RI, CT, NY, NJ, DE, PA, OH, WV, MI, WI

OGCSouthEastEthics@va.gov for VA, NC, SC, GA, FL, MI, AL, LA, southern TX, Puerto Rico

OGCMidwestEthics@va.gov for DC, MD, IN, KY, TN, AR, MO, IL, IA, MN, ND, SD, NE, KA,

OGCWestEthics@va.gov for northern TX, OK, NM, AZ, CO, UT, WY, MT, ID, NV, CA, OR, WA, HI, AK, Guam, Philippines

The OGE has published an updated “Compilation of Federal Ethics Laws” that includes all provisions signed into law through January 13, 2013. The compilation includes both the laws within the jurisdiction of the ethics program and related statutes of interest to the Executive Branch ethics programs, such as the Hatch Act. The Compilation may be found on OGE’s website at: http://www.oge.gov/Laws-and-Regulations/Statutes/Compilation-of-Federal-Ethics-Laws.

A version of this article was originally published in the Winter 2001 VHA Ethics Newsletter. It has been updated to include new information on how the OGC is organized and how to contact the agency.