

Item 3.

**Submitting a Plan to Manage Conflict of
Interest to U.T. System for Approval
Plus Sample Letters**

Submitting a Plan to Manage Conflict of Interest to U.T. System for Approval (see Sample Letter below)

Texas Education Code Section 51.912 (a) requires that the Board approve an employee's business participation in a licensee company or research sponsor. In the Regents' *Rules and Regulations, Series 90103: Equity and Series 90104: Business Participation and Reporting*, the Board delegates this authority to each component President and requires compliance with the procedures set forth in "*Procedure for Obtaining Approval of Plan to Manage Conflict of Interest.*"

Generally, sponsorship and license agreements, even ones that raise conflict issues, do not have to be submitted to the Academic Affairs Office or the Health Affairs Office for approval. Pursuant to the Regents' *Rules and Regulations*, these agreements are reviewed by the Office of General Counsel and signed by the chief administrative officer or designee at the component; however, final approval of agreements that raise conflict of interest issues is contingent on approval of the plan to manage the conflict of interest. So, **keep the original signed copies of the agreement at your office** until after the Academic Affairs Office or Health Affairs Office has approved your plan to manage the conflict of interest.

Procedure

1. Read the "*Procedure for Obtaining Approval of Plan to Manage Conflict of Interest.*"
2. Develop a plan for managing the conflict of interest.
3. Prepare a letter from your president to the Executive Vice Chancellor for Academic Affairs or to the Executive Vice Chancellor for Health Affairs requesting that your attached plan to manage a conflict of interest be reviewed and approved.

Your plan should include the following information:

- a. A brief outline of the terms of sponsorship or the "deal" in the license agreement.
- b. Names of the employees (including department and title) and the facts that raise the conflict of interest issues. Indicate whether they are currently holding equity in the company or will be holding equity in the future. Also, indicate whether they are or will serve on its Board of Directors, Scientific Advisory Board, etc.
- c. A description of the institution's plan to manage the potential conflict of interest to reduce or eliminate the likelihood that actual conflicts will arise. Address each point in § B 1-4 of the "*Procedure for Obtaining Approval of Plan to Manage Conflict of Interest.*"

d. A description of any steps taken and an explanation of the basis for any conclusion that management appears unlikely to succeed. See § C 1-4 of the "Procedure for Obtaining Approval of Plan to Manage Conflict of Interest."

e. A request for approval.

4. The Office of Health Affairs or Office of Academic Affairs will notify you when your management plan has been approved.

**Sample Letter and Attached Plan
(Revise Accordingly)**

Dear Executive Vice Chancellor for Academic Affairs/Executive Vice Chancellor for Health Affairs:

Attached please find a "Plan to Manage Conflict of Interest for Dr. Smith with XYZ Company."

The attached agreement has been approved in accordance with the Office of General Counsel's requirements. We request that you approve Dr. Smith's holding equity in and service as a member of Licensee's Board of Directors [Revise Accordingly].

Sincerely,

Your President

Reviewed and approved:

Office of General Counsel

Date: _____

Approved:

U. T. System: Executive Vice Chancellor for Academic Affairs/Executive Vice Chancellor for Health Affairs

Date: _____

Enclosure: Plan to Manage Conflict of Interest

cc: Interested Institutional Personnel
Inventor
Georgia K. Harper (Office of General Counsel)

PLAN TO MANAGE POTENTIAL CONFLICT OF INTEREST FOR DR. SMITH AND XYZ COMPANY

**Describe
Inventions
and
License
Agreement**

The The University of Texas at _____ (the "University"), on behalf of the Board of Regents, wishes to enter into an exclusive license agreement with XYZ Company ("Licensee"), a Texas corporation having a principal place of business in Austin, Texas. The license agreement covers the following inventions in the field of _____: **[list the inventions]** (collectively, the "Inventions"). The Inventions were developed by Joseph Smith, Ph.D./M.D., Professor of _____ in the Department of _____ at University.

The provisions of this exclusive license agreement have been reviewed and approved pursuant to the Regents' *Rules and Regulations* by _____, _____ **[fill in name of chief administrative officer or designee and title]** and the Office of General Counsel. Under the proposed license agreement, Licensee is granted an exclusive, worldwide license and right to make, have made, use, lease, rent, sell and distribute the Invention (s) **[please recite language verbatim from your license agreement]**. As consideration for the exclusive license, Licensee will pay The University of Texas Board of Regents (1) a royalty fee of \$2,500; (2) an additional royalty fee of \$7,500 due one year from the effective date, and (3) a three percent (3%) running royalty on net sales of licensed products in the field of _____. The license agreement includes sublicense provisions, reimbursement of all Invention expenses to date and on patent applications filed in the future, and standard language indemnifying the Board of Regents.

**Describe
Faculty
Member
(s), Facts
that Raise
Conflict
Issues and
Plan to
Manage
Conflict**

Dr. Smith currently holds equity in Licensee and has requested approval to serve on the scientific advisory board or as a director of Licensee **[include exactly and only those facts applicable to your circumstance]**. The University has determined that a license to a faculty-owned company is appropriate because the activities of Licensee involve applied research and the manufacturing of _____, whereas Dr. Smith's University laboratory performs basic research **[include only if appropriate]**. Additionally, the University plans to manage the potential conflict of interest to reduce or eliminate the likelihood that actual conflicts will arise by (1) assigning an independent departmental person to monitor the faculty member's research activities; (2) requiring administrative review and approval of the faculty member's research projects that are subject to potential conflicts of interest; and, if necessary (3) requiring modification of research plans or transferring portions of research to independent researchers to avoid actual conflicts of interest. **[Please describe only those circumstances applicable to your situation.]**

**Request
Approval**

Pursuant to the Regents' *Rules and Regulations*, Series 90103: Equity Interests and Series 90104: Business Participation and Reporting approval

by the component President and compliance with the requirements of the Procedure for Obtaining Approval of the Plan to Manage Conflicts of Interest is necessary for Dr. Smith to hold equity in and serve as a director of Licensee. **[include only those requests applicable to your situation.]**

**Sample Plan - this Content was Recently Approved by the
Office of General Counsel and the Executive Vice Chancellor
[All names have been fictionalized]**

Plan to Manage Conflicts of Interest for Ian Morse, Ph.D. - Company, Inc.

The University of Texas Health Science Center at San Antonio, ("UTHSC-SA"), on behalf of the Board of Regents, has entered into a series of non-exclusive license agreements with Company, Inc. ("Licensee"), a Texas Corporation, having a principal place of business in San Marcos, Texas. The license agreements cover the following four cell lines in the field of antibodies and related materials for use as research reagents (collectively, the "Inventions"). The Inventions were developed, in part, by Ian Morse, Ph.D., Professor of Cell Biology at UTHSC-SA.

The provisions of these non-exclusive license agreements have been reviewed and approved pursuant to the Regents' *Rules and Regulations* by Dr. Martinez, the chief administrative officer, and the Office of General Counsel. Under the license agreements, Licensee was granted a royalty-bearing, non-exclusive worldwide license and right to manufacture, use, distribute, and/or sell antibody products derived from the Inventions solely for research reagent purposes. Additionally, for each license agreement, Licensee has paid The University of Texas Board of Regents (1) a non-refundable license issue fee; and (2) a six percent (6%) running royalty on net sales of antibody products derived from the Inventions. The license agreements include standard language indemnifying the Board of Regents.

Dr. Morse holds 100,000 of the 850,250 shares outstanding as of June 30, 2000 in Licensee and serves on the Board of Directors of Licensee. In view of this potential conflict of interest, UTHSC-SA has developed the following measures to eliminate the likelihood that actual conflicts will arise:

- (1) As required by *Texas Education Code*, Section 51.912(b) and the Series 90103: Equity Interests and Series 90104: Business Participation and Reporting, Dr. Morse has provided UTHSC-SA with a written disclosure and will update it as required by law.
- (2) In view of this disclosure, UTHSC-SA has determined that a license to a company owned, in part, by Dr. Morse is appropriate because the activities of Licensee involve applied research in the development of antibody products for research and diagnostic uses and the sale of such antibody products for research purposes, whereas Dr. Morse performs basic research at UTHSC-SA.
- (3) UTHSC-SA has implemented a management strategy to minimize the risk of a future conflict of interest.

Dr. Morse will submit a completed confidential invention report form to the Office of Intellectual Property Administration for UTHSC-SA regarding the Inventions and any future inventions. Dr. Morse further agrees to not transfer any materials or proprietary information regarding such future inventions to Licensee prior to the consummation of a confidential disclosure agreement, sponsored research agreement, and/or a license agreement related thereto, if any. Dr. Morse also agrees to assist the Office of Intellectual Property Administration in obtaining such additional information as may be required to evaluate licensing opportunities for future inventions. The invention report forms and related correspondence or agreements, as well as Dr. Morse's compliance with the terms agreed to above, shall be reviewed by Dr. Michelle Frank, Dean of the Graduate School of UTHSC-SA, for any potential conflicts of interests between Dr. Morse's role as an employee of UTHSC-SA and his financial interest in Licensee. Should Dr. Frank determine that a potential conflict of interest exists, the terms of any license agreement with Licensee will be modified accordingly or such other remedial action taken as would be in accordance with Section 51.912 of the *Texas Education Code* and corresponding provisions of The U. T. System Intellectual Property Policy.

The proposed arrangement is consistent with Section 51.912 of the *Texas Education Code* and corresponding provisions of The U. T. System Intellectual Property Policy. Pursuant to the the Regents' *Rules and Regulations, Series 90103: Equity Interests and Series 90104: Business Participation and Reporting*, approval by the component President and compliance with the requirements of the Procedure for Obtaining Approval of the Plan to Manage Conflicts of Interest is necessary for Dr. Morse to establish sponsored research and licensing agreements with Licensee.

**Another Sample Plan Approved
by the Office of General Counsel and the Executive Vice Chancellor**

Plan to Manage Potential Conflict of Interest for Dr. Thomas Andrews

Thomas Andrews, Ph.D., Professor of Neuroscience at The University of Texas at Austin ("U. T. Austin") and Mark Jones, Ph.D., Assistant Professor, Department of Engineering at U. T. Austin have jointly created the following invention ("Invention") in the field of _____: U. S. patent number 9,999,999, issued June 1, 1999, entitled, "_____." [Also need a Plan to Manage Potential Conflicts of Interest for Dr. Jones.]

Under a proposed patent license agreement with XYZ Company ("Licensee"), of Houston, Texas, Licensee is granted an exclusive worldwide license for the right to manufacture, have manufactured, import, use, sell, and/or offer to sell licensed products, identified products and diagnostic products covered by the Invention. The provisions of this exclusive license have been reviewed and approved by the President of U. T. Austin and the Office of General Counsel pursuant to the Regents' *Rules and Regulations*. As consideration for the exclusive license, Licensee will provide the following compensation to the U. T. Board of Regents: (1) a sublicense fee of 10% of the revenues received from the sublicensing of any of the licensed technologies; and (2) three million, eight hundred thousand (3,800,000) shares of common stock.

In addition, Licensee will sponsor research in Dr. Andrews' laboratory at U. T. Austin at

\$50,000 per year for 2 years. The sponsored research agreement will specify particular research objectives different than Dr. Andrews' continued basic science research objectives (not supported by Licensee).

Dr. Andrews will receive 1,360,000 shares of common stock in Licensee. In addition, Dr. Andrews will serve as chairman of the scientific advisory board to Licensee with an annual compensation of \$30,000.

U. T. Austin has developed the following measures to eliminate the likelihood that actual conflicts of interest will arise with regard to Dr. Andrews. As required by *Texas Education Code*, Section 51.912(b), and the Regents' *Rules and Regulations Series 90103: Equity Interests* and *Series 90104: Business Participation and Reporting*, Dr. Andrews has provided U. T. Austin with a written disclosure of all potential conflicts of interest (both financial and arising through his proposed role as a member of the Scientific Advisory Board) that might emanate from the terms of the proposed patent license agreement.

In view of this disclosure, U. T. Austin has determined that a license to a faculty-owned company is appropriate because the activities of Licensee involve applied research in the discovery and development of _____, whereas Dr. Andrews performs basic research at U. T. Austin.

Additionally, U. T. Austin has implemented a management strategy to minimize the risk of a future conflict of interest. Under this plan Dr. Andrews will submit written descriptions of ongoing and planned research to be reviewed by Michael Green, Ph.D., Associate Dean for Research at U. T. Austin. These written descriptions will be in the form of required annual reports for all agencies currently providing research funding to Dr. Andrews' laboratory at U. T. Austin, as well as any new research proposals soliciting funding from public and private agencies. All research projects described in these reports will be reviewed by Dr. Green for any potential conflicts of interest, and all such projects shall require approval by Dr. Green. If any such research project shall be found by Dr. Green to result in a potential conflict of interest, Dr. Andrews will be required either to modify his research plan such that it is deemed by Dr. Green to no longer create a conflict of interest, or transfer the portions of research that have been found to create a conflict of interest to an independent investigator, to be designated in the mutual consent of Dr. Green and Dr. Andrews.

The proposed arrangement is consistent with Section 51.912 of the *Texas Education Code* and corresponding provisions of The U. T. System Intellectual Property Policy. Pursuant to the Regents' *Rules and Regulations, Series 90103: Equity Interests* and *Series 90104: Business Participation and Reporting*, approval by the component President and compliance with the requirements of the Procedure for Obtaining Approval of the Plan to Manage Conflicts of Interest is necessary for Dr. Andrews to acquire equity in and serve on the Scientific Advisory Board of Licensee.

[License Checklist](#) | [Intellectual Property Section Homepage](#) | [Copyright Crash Course](#)

University of Texas System | Office of General Counsel
Comments to gharper@utsystem.edu
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