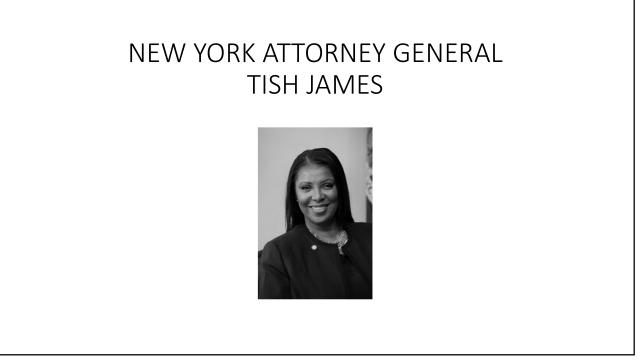
MANAGING CONFLICTS OF INTEREST IN HEALTHCARE Health Care Compliance Institute March 2020

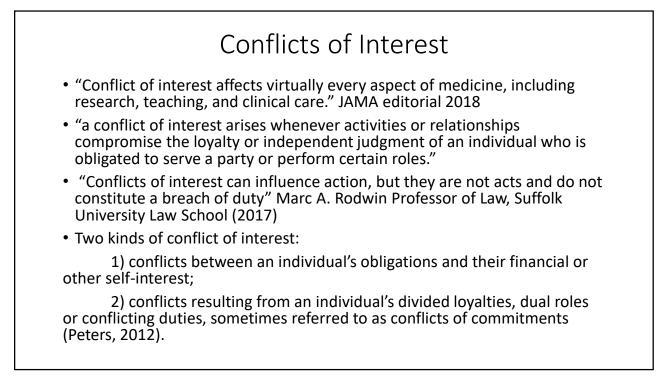
James G. Sheehan, Chief Charities Bureau Office of Attorney General Tish James James.Sheehan@AG.NY.gov and

Roy Snell

Strategic Adviser HCCA/SCCE

Roy.Snell@corporatecompliance.org







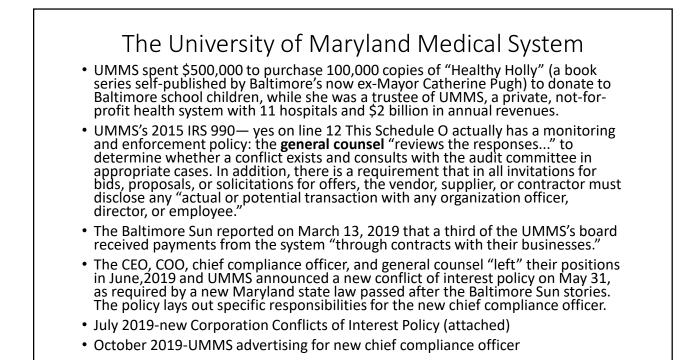
How to Address Conflicts of Interest?

- 1) ignore
- 2) tolerate and trust judgment
- 3) train, tolerate, trust judgment
- 4) permit but require internal disclosure
- 5) permit but require public disclosure
- 6) manage (systems, thresholds, reporting, review, decide)
- 7) test and discipline
- 8) prohibit

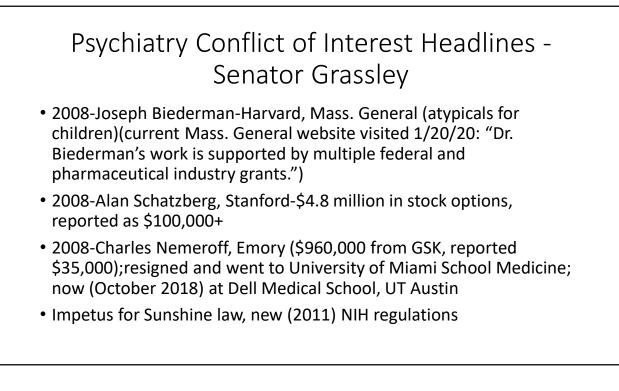
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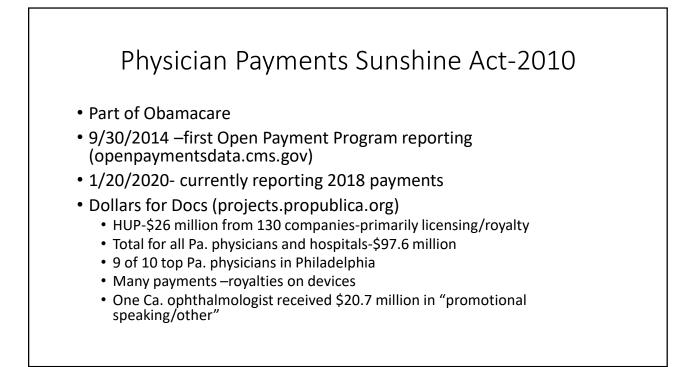
Memorial Sloan Kettering-Conflict of Interest Concerns

- Chief Medical Officer Dr. Jose Basalga failed to disclose millions of dollars in payments from drug and healthcare companies in published articles, resigns 9/13/18-NY Times Pro Publica
- "Dr. Baselga and MSK said that he had disclosed his industry relationships to the cancer center."
- After internal investigation-NY Times reports statement by outside counsel investigator that plans to manage conflicts of interest "were not implemented because it was felt to be unnecessary or because there was a failure to realize that a management plan was needed."
- Beginning in 2014, NY Times reported that senior executives were no longer required to vet financial relationships
 with a conflict of interest advisory committee because the hospital felt the committee should not be asked to
 make decisions about executives to whom they reported.
- 2016 Schedule O "The Compliance Officer and staff are responsible for administering the conflict of interest program..."
- 2017 Schedule O The Compliance Officer and staff are responsible for administering the conflict of interest program..."
- April 2018-Debra Berns has been named as MSK's Senior Vice President and Chief Risk Officer
- April 2019-new MSK New and Enhanced Conflict of Interest Principles approved
- September 2019-new policies-attached-Conflict of Interest and Commitment (Eileen-sent to you 1/20 at 558 PM.)

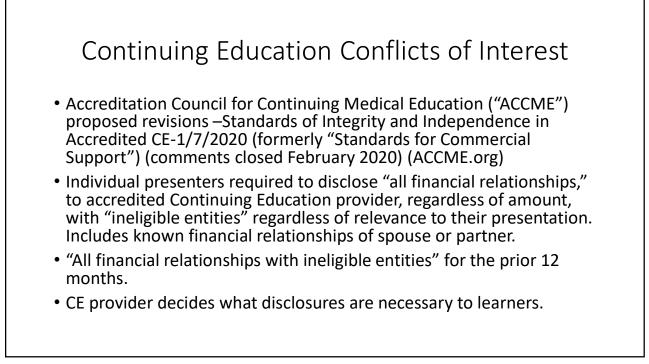


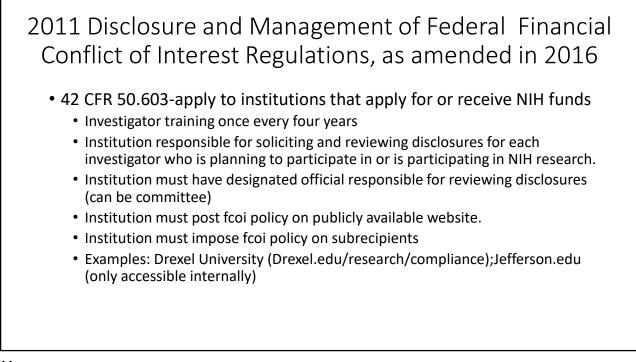




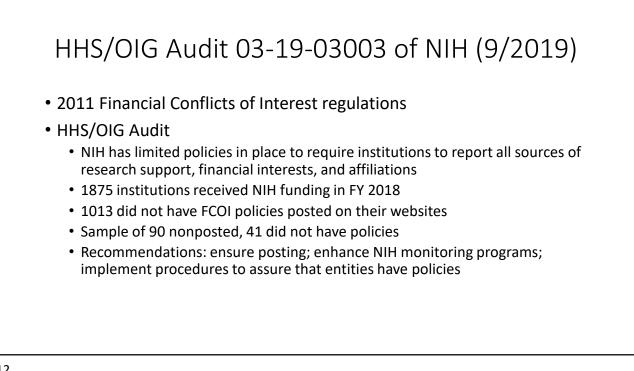


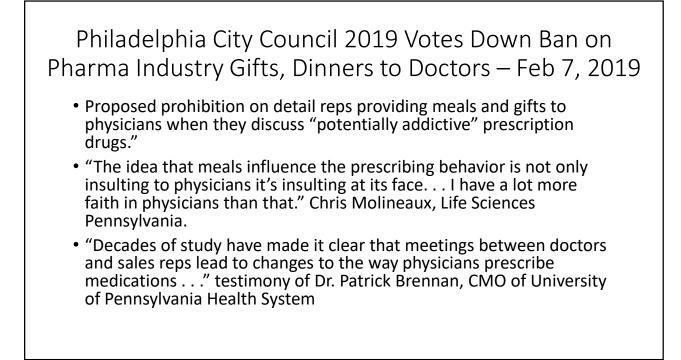




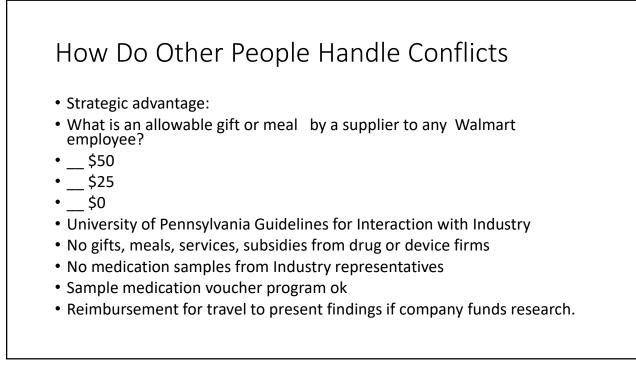


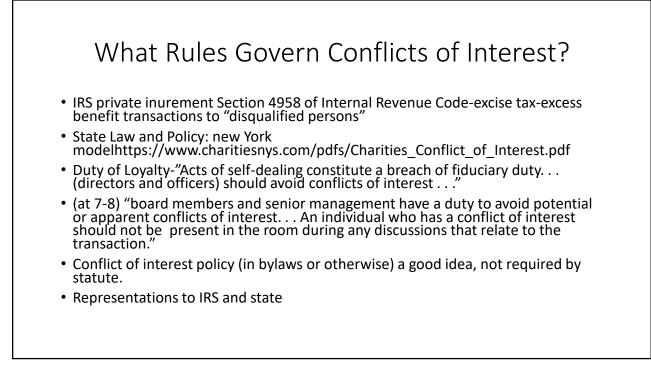




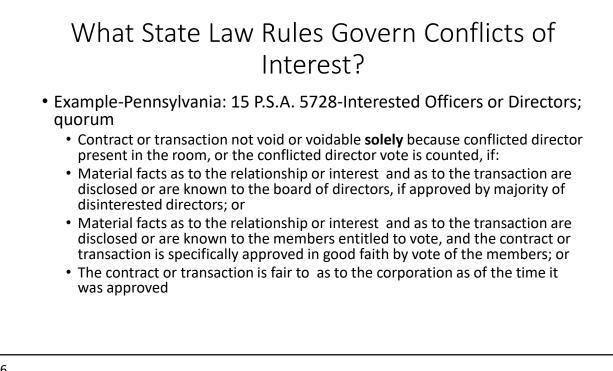


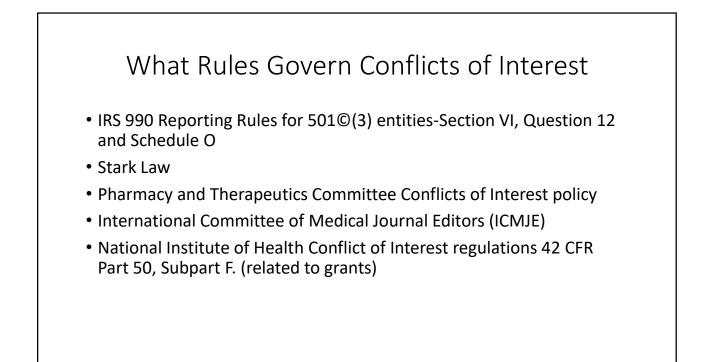




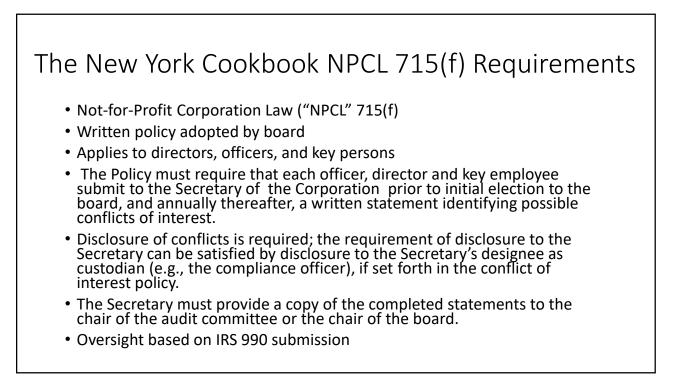


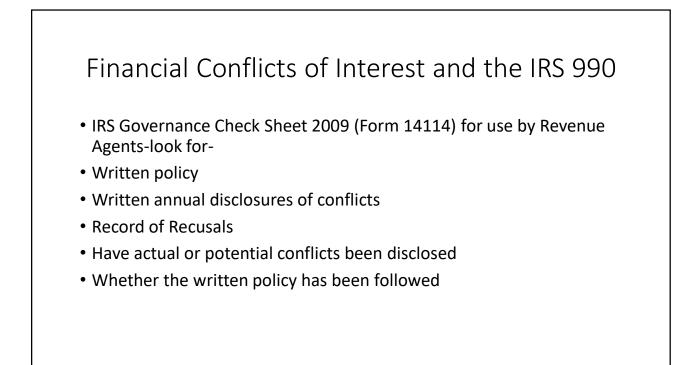




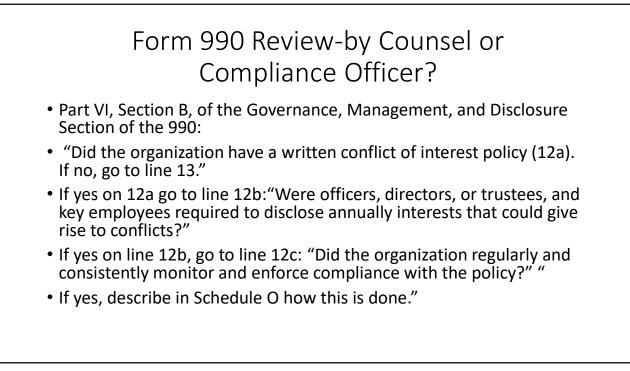












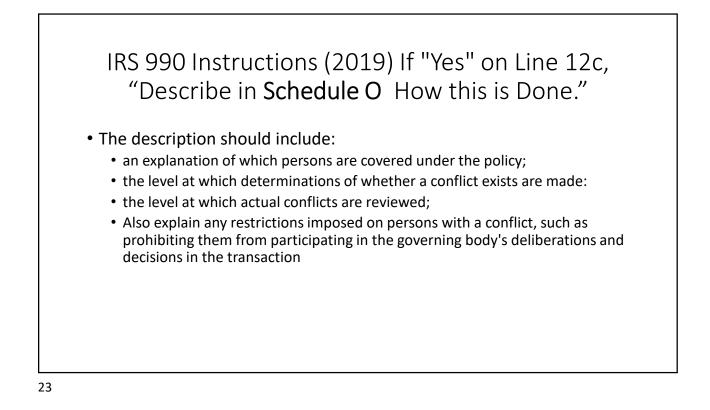
IRS 990 Instructions (2019) Part VI: Governance, Management, and Disclosure

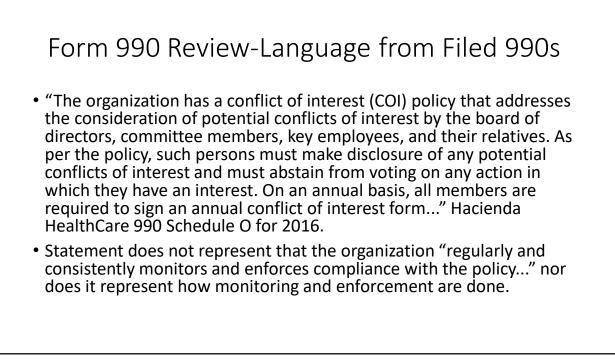
- Line 12a. Answer "Yes," if as of the end of the organization's tax year the organization had a written conflict of interest policy.
- "A conflict of interest arises when a person in a position of authority over an organization, such as an officer, director, manager, or key employee can benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated. For this purpose, a conflict of interest does not include questions involving a person's competing or respective duties to the organization and to another organization . . ." (at 24)

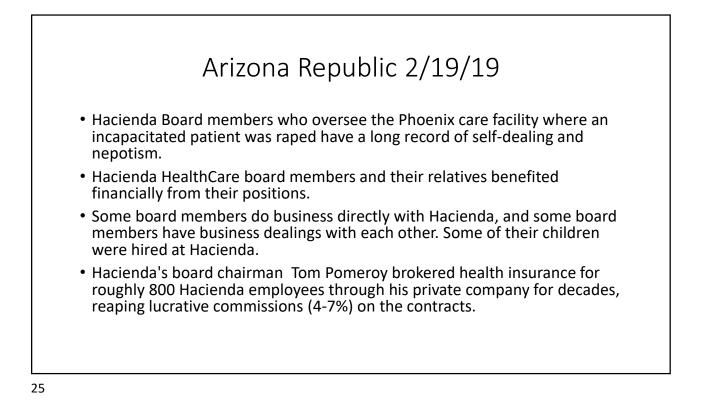
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IRS 990 Instructions (2019) If "Yes" on Part VI line 12c, "describe in Schedule O how this is done."

• Line 12c. ", describe on Schedule O (Form 990 or 990-EZ) the organization's practices for monitoring proposed or ongoing transactions for conflicts of interest and dealing with potential or actual conflicts, whether discovered before or after the transaction has occurred."





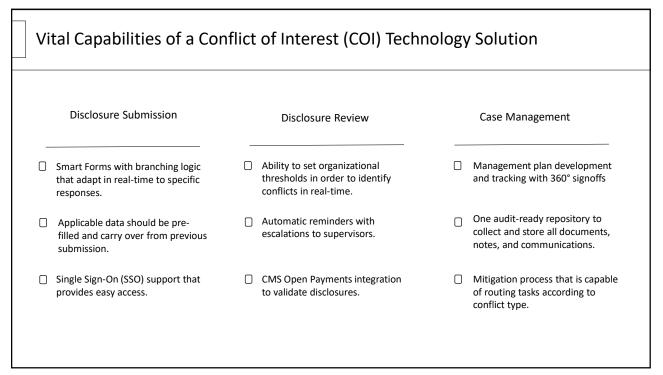


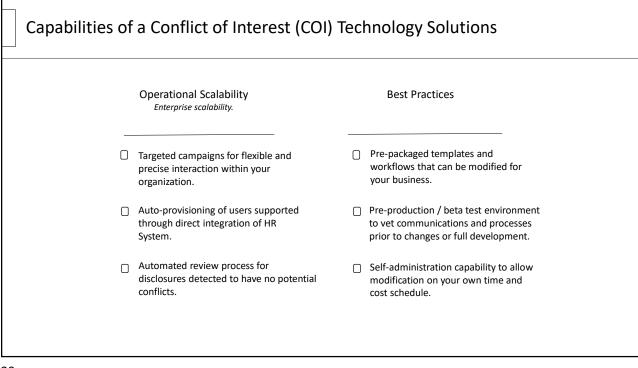


Operational Challenges for Major Academic Medical Centers on Conflicts of Interest

- Written policy, state law requirements
- Need to address full range of conflict of interest issues and reporting for board members, officers, employees, physicians with privileges
- Reviewing, reporting process on Schedule O of annual IRS 990 (hint: counsel need to review conflict language before submission)
- Whose job should it be (counsel, compliance, audit committee, compliance committee, secretary) (Hint: not a process general counsel should be responsible for)
- · Consequences of failure to respond/report
- Systems for capturing conflict reporting
- Record of Recusals-minutes and other decision documents











For Further Reading: JAMA THEME ARTICLE 2017 JAMA. 2017;317(17)

- 23 separate articles covering:
- Academia/Academic medical centers
- Medical education
- Medical practice and research
- Industry payments to physicians and industry funding of and collaboration with researchers
- Guideline panels
- Professional associations
- Disclosures to patients
- Roles of journals and authors

