



MEMORANDUM

TO:	MEMBERS OF THE GOVERNANCE SUBCOMMITTEE
FROM:	C. SCOTT TOCHER, DEPUTY GENERAL COUNSEL
SUBJECT:	December 2, 2015
DATE:	AMENDMENT TO CONFLICT OF INTEREST POLICY FOR CIRM EMPLOYEES

Summary

Since early 2005, CIRM employees have adhered to a Conflict of Interest policy specifically created by CIRM that exceeds state conflict of interest standards applicable to other state officials. The policy reflects CIRM's longstanding commitment to open and fair grant review and administration.

As part of CIRM 2.0, the agency has undertaken a review of all agency policies and practices to identify opportunities to improve operational and strategic efficiency consistent with the agency's mission to accelerate stem cell treatments to patients with unmet medical needs. To that end, the Board has already reviewed and approved amendments to conflict of interest rules governing the Grants Working Group and begun a state-mandated review of its conflict of interest code. As part of that process, the CIRM team identified areas of the CIRM employee conflict of interest policy that are ripe for improvement, as outlined in this memorandum and indicated in the attached mark-up of the existing policy. The CIRM team believes the proposed amendments harmonize the policy with other recent Board decisions and ensures the agency is able to recruit the most talented public servants to meet the challenges facing CIRM.

I. Introduction

As public officials under state law, CIRM employees (including members of the Board) are subject to the state's conflict of interest rules found in the Political Reform Act ("PRA").¹

¹ CIRM employees are also governed by other state conflict of interest laws embodied by Government Code sections 1090 (governing the award of contracts) and 19990 (governing incompatible activities).

Generally speaking, the PRA requires employees to disclose certain financial interests and to refrain from participating in decisions in their official capacity when their financial interests may be affected by their participation. Pursuant to the PRA, the agency reviews its conflict of interest code to ensure all appropriate individuals are included in the agency's code and the levels of disclosure are appropriate. This process is overseen by another agency, the FPPC, which has created a model conflict of interest code which CIRM has adopted as its own.

Despite the existing state law structure governing conflict of interests for CIRM employees, CIRM nevertheless created a policy in 2005 to go above and beyond state law in identifying circumstances in which CIRM employees must refrain from participating. These additional areas generally prohibit the following circumstances:

- 1) participation in review or administration of a grant where the CIRM employee or family member is also an employee of the applicant or PI;
- 2) participation where the employee or family member could receive a financial benefit;
- 3) participation where the PI is or has been an associate or collaborator of the employee;
- 4) participation in the preparation of a grant application;
- 5) ownership of stock exceeding \$10,000 in a company with a substantial interest in stem cell therapies; and
- 6) consulting, teaching or advisory board service for any institution funded by the agency.

Recently, the ICOC adopted revisions to the regulation governing conflicts of interest for the Grants Working group. Those amendments clarified the scope of "financial" conflicts of interest as they might be triggered by family members, improved disclosure requirements, and defined terms to make the policy easier to understand and abide. We propose to make similar improvements to the Employee Conflict of Interest Policy.

II. Proposed Amendments

The CIRM team proposes improvements to each section of the conflict of interest policy. (A red-line version is attached as Exhibit A and a clean version is attached as Exhibit B to this memorandum.) Throughout the document are non-substantive revisions to grammar and terminology to improve clarity and comport with CIRM practice and usage. In addition, the following substantive improvements are proposed:

Paragraph 1. This section is revised to adopt the PRA's definition of "immediate family member" to ensure CIRM's policy follows state policy regarding usage of that term. This section retains its more stringent (than state law) scope by reaching government salary received by a spouse if that government agency is also a CIRM award recipient.

Paragraph 2. Adopts the revised definition of "immediate family member."

Paragraph 3. The revisions retain the concept of "professional" sources of conflicts of interest but provides a more detailed definition of "research collaborator" to comport with the Board's recent definition of the same term in its Grants Working Group COI policy.

Paragraph 4. (Non-substantive.)

Paragraph 5. The existing policy prohibits employee investment exceeding \$10,000 in any company with "substantial interests" in stem cell therapy. "Substantial" interest is defined to mean one in which more than 5% of the company's research budget is known to be devoted to stem cell therapy. In application CIRM has found this threshold largely unworkable because the 5% research budget threshold is almost impossible to assess using publicly available information.

In addition, the provision applies to companies that have never applied for CIRM funding and may never do so. These amendments improve the existing employee investment prohibition by providing a clearer and more identifiable threshold for stem cell research expenditures of 20% as determined by publicly available information.

Paragraph 6. The proposed changes conform to recent interpretation of state law in the context described in this provision.

Requested Act: Recommend Board approval of the proposed amendments to the CIRM Employee Conflict of Interest Policy.

Attachment

To be successful, the CIRM research program, which is funded by the taxpayers of California, must conduct its activities in a way that is open, fair and free from bias, whether actual or perceived. This is particularly relevant for those employees who are involved in reviewing applications for funding or managing projects that have received CIRM funding. Consistent with this aim, CIRM employees must be free from both real and apparent conflicts of interest. CIRM is strongly committed to effective conflict of interest policies.

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A conflict of interest exists when a CIRM employee has a financial or other interest that significantly impairs the employee's ability to carry out his or her duties in an objective manner that is free from bias or that creates an unfair advantage for any person, institution or company.

To ensure that employees are free from financial or other conflicts of interest, above and beyond those described in the Incompatible Activities Statement and the Conflict of Interest Code, CIRM has adopted the following rules. These rules go beyond the conflict and disqualification provisions of state law, including the Political Reform Act.

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Deleted: professional associate of the CIRM employee, such as a student, pre-or post-doctoral advisor, or who has been a collaborator

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Deleted: in any organization with substantial interests in stem cell therapy. A company with a substantial interest in stem cell therapy is defined as one in which more than 5% of the research budget is known to be devoted to stem cell therapy

1. CIRM employees may not participate in the review of a contract or application for research or facilities funding from, nor may they participate in managing a contract or award to, any institution in which the CIRM employee or an immediate family member, as defined in the Political Reform Act, is an employee of the institution,

2. CIRM employees may not participate in the review of a contract or application for research or facilities funding, nor may they participate in managing a contract or award, from which the CIRM employee or an immediate family member, as defined in the Political Reform Act, could receive a financial benefit.

3. CIRM employees may not participate in the review of a contract or application for research or facilities funding from a Principal Investigator who is, or has been, a research collaborator, a former trainee, or mentor of the employee within the last three years. A "research collaborator" is one with whom the employee has participated on the same research project or effort to advance or publish research results or the commercial development of a product. The term does not include passive associations such as belonging to the same scientific society or contributing to the same review article or textbook.

4. CIRM employees may not participate in the preparation of a response to a CIRM Request for Proposals, or an application for research or facilities funding except to provide information to the applicant.

5. CIRM employees may not invest or trade in: (a) a company that has received, or applied, for funding from CIRM or (b) a company that a reasonable person, based on publicly available information, would know devotes 20% or more of its research budget to stem cell research. If such a conflict arises, the CIRM employee must

initiate divestiture within 90 days of obtaining knowledge of the conflict and may not participate in any part of the review of the application. Financial investments include stocks, bonds and other financial instruments and investments exceeding \$10,000, but do not include diversified mutual funds. To the extent that CIRM employees have an investment of less than \$10,000, they shall be governed by the disqualification provisions of the Political Reform Act.

Deleted: or place the interests in a blind trust

Deleted: Property interests include real estate and other property interests as well as intellectual property interests, including patents and copyrights.

6. CIRM employees may not engage in compensated services (including consulting, teaching or advisory board service) for any institution engaged in stem cell research funded by the ICOC in the State of California. This does not preclude an employee from serving as a voluntary clinical faculty member for which the employee receives no compensation or other financial benefit.

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I have read and understand the Conflict of Interest Policy for CIRM Employees and I certify that I will abide by it as long as I am an employee of CIRM.

Signature _____

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