

## **CECA MEETING MINUTES**

### **December 20, 2012**

Members present: Armand Antommaria, Jeffrey Berger, Ken Berkowitz, Art Derse, Ann Hesters, Nneka Mokwunye, Kathy Powderly, Terry Rosell, Marty Smith, Wayne Shelton, Jeffrey Spike, Anita Tarzian (chair) Lucia Wocial, Bob Baker (guest)

Members absent: Joe Carrese, Brian Childs, Paula Goodman-Crews, Christine Mitchell, Kayhan Parsi, Jack Gallagher, Martha Jurchak, Tia Powell

The meeting was called to order at 10:30 AM Eastern. We discussed the interpretive paragraphs for the Code responsibilities of “Avoid or manage conflicts of obligation” and “Avoid or manage conflicts of interest” (see below). We discussed uniformity among code responsibility statement interpretive paragraphs and agreed that each should be roughly equal in length (about 2 paragraphs, less than 500 words), avoid content that would restrict them to a particular period of time, and define relevant terms. We agreed that once we discuss and refine a Code element on our monthly telecom, any further refinements should be shared via CECA listserv e-mail. Those on the call recommended that Anita judge which edits to accept or reject. If someone feels that an edit is substantive and requires discussion with the committee, (s)he should let Anita know.

### **DRAFT (IN PROGRESS) COO/COI Code Responsibility Interpretive Paragraphs**

General comments: We agreed to keep these two responsibilities separate, despite overlaps between the two. Since the two are often conflated, it is important to clarify the distinctions.

Regarding conflicts of obligation, we discussed the difference between a role, a duty, and an obligation. Obligations and duties are similar and are conferred based on one’s various roles. The word “duty” has more semantic weight, but in general, having a duty or obligation to another person or institution confers rights to that person/institution to demand that the person with the duty/obligation comply. For example, if an HCE consultant is obligated to protect the confidentiality of those involved in an HCEC, then the HCEC participants have the right to demand that this obligation is met. For clarity, we agreed to use the term “obligation” rather than “duty” or “role.”

One definition of “interest” is “regard for one's own benefit or advantage.” Interests that are at the center of the discussion about conflicts of interest are situations that may impair an HCE’s judgment during HCEC. While the strategies for managing COO and COI are similar (self-awareness, transparency, disclosure, recusal), we need to be clear in the examples provided & explanations given how the two are different.

Bob agreed to share an article with more information delineating these concepts.

**Avoid or manage conflicts of obligation.** HCE consultants should avoid significant conflicts between their obligations as HCE consultant and their other obligations, and should manage conflicts appropriately.

*HCE consultants typically have multiple obligations within and outside of an organization. At times when doing HCEC, competing obligations arise. [Change this example to situation in which social worker is too close to case to switch hat? → For example, an HCE consultant who is also a social worker or a member of a hospital leadership team may experience pressure as part of that role to limit a patient's length of stay, which may not be in the patient's best interests or which could lead to plans for an unsafe discharge.] As another example, HCE consultants often have long-standing relationships with clinical colleagues working in the same institution; personal loyalty to a colleague might make a consultant reluctant to confront an issue of medical error within an ethics consultation. HCE consultants' personal obligations may also conflict with professional ones, for example, when a parent needs to pick up a child at a day care center and feels pressure to rush a consultation toward completion. [Add risk manager who also does HCEC.]*

*HCE consultants should aim for transparency by acknowledging to self and others the existence of conflicting obligations. Avoidance, while an appropriate management strategy, is not always possible. Appropriate management strategies include disclosure and recusal. An Ethics Consultation Service with multiple consultants could permit members of the consult team to trade cases as a means of managing conflicting obligations. Disclosure can promote the capacity to confer with colleagues and generate ethically appropriate options. [Give more specific example, e.g., risk manager example]. Persistent conflicts of obligation may expose system issues, such as lack of time and support, that must be addressed so that HCE consultants can potentially avoid some conflicts of obligation and provide quality service.*

Marty (with Tia) agreed to revise the COO interpretive paragraphs and send to the CECA listserv by February 2013.

**Avoid or manage conflicts of interest.** HCE consultants should avoid [significant?] conflicts of interest when possible, and if such conflicts are unavoidable, should manage them appropriately.

*HCE consultants have an obligation to properly manage conflicts of interest, i.e. situations in which the professional judgment of a HCE consultant may appear to be affected or compromised by competing interests (e.g., personal, financial), especially in a way that might adversely affect [HCEC?] recommendations regarding patient care. [Add brief examples that are clearly COI, with respect to word limit? Art's suggestion - CMO contracts with bioethics center then calls for consult? Need examples that involve potential financial or personal conflict. Previous example may be more COO: Examples where recusal is clearly indicated would include if the consultant has a close personal or professional relationship to the patient involved in an ethics consultation and there is another HCE consultant available.] [This next sentence needs work → If it is not possible to avoid a conflict of interest, HCE consultants should be transparent and make full disclosure to all the involved parties of the nature of the conflict, maintain their independence, remain unbiased, and to exercise good professional judgment.]*

*One difficult issue to some people is whether being paid by the institution amounts to a conflict of interest. [If so, it may be managed through disclosure.] ASBH suggests that is a relationship worth disclosing, but it does not require recusal in a well-functioning hospital or healthcare organization. Living up to the highest professional standards will occasionally mean having a fiduciary responsibility to the patient that must be put before the interest of the institution. In the long run this will benefit the*

*institution as well. The importance of recognizing conflict of interest, then, is as much for the institution as for the consultant: institutions must recognize, in policies and job descriptions, that ethicists will be supported by the institution for giving ethical advice based on national standards, professional Codes and consensus statements, and local and national law.*

Wayne (with Jeffrey S.) agreed to help revise the COI interpretive paragraphs by February, 2013. If anyone else can assist, let Wayne know.

### **ASBH CECA WIKI**

Anita asked if anyone has accessed the CECA WIKI discussion board on the ASBH website. Kathy has but wasn't sure if the content, when edited, is saved for whomever edits or whether the person signed in retains a "home page" for edited documents. CECA members should visit the wiki and give Anita feedback about its functionality.

### **CECA MEMBERSHIP**

Anita reminded group that we need to help the ASBH nominating committee identify a CECA chair-elect and nominees for CECA membership starting in October 2013. One third of current CECA members must rotate off of the committee at that time. Anita will stay on for one year as immediate past chair. We will have to identify a process for deciding which CECA members will rotate off next year. Please send Anita your suggestions.

The meeting adjourned at 11:45 am. The next meeting is on Thursday, January 17, 2013, 11:00 a.m. to 12:30 p.m. Eastern.