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The Risk to Academic Freedom That Lurks in Corporate Consulting Contracts

By Marc Lipsitch

The relationships between academic researchers and the companies that sponsor such scholars' work are appropriately scrutinized by the news media, government officials, and the public. Two common problems that arise in those relationships are, first, bias in research and, second, the failure of some recipients to disclose their ties—thereby preventing their audiences from considering the possibility of conflict or bias.

But I have a different concern about ties between academic researchers and industry: consulting contracts that explicitly prohibit the researcher from freely expressing opinions or undertaking activities that are counter to the commercial interests of the company. Under conflict-of-interest policies at many leading universities, researchers are not restrained from accepting such provisions.

I am a professor of epidemiology at Harvard School of Public Health, and I have consulted for several pharmaceutical companies or their intermediaries. Consulting provides several advantages to a faculty member beyond the financial benefits, including the chance to improve one's understanding of the health-care system, to develop more interesting and relevant research questions, and to apply one's own research knowledge to real-world problems. Such advantages can outweigh the risks if conflict-of-interest rules are followed, if the freedom to publish and express opinions is guaranteed (apart from reasonable limitations on disclosing confidential data), and if consulting remains a modest proportion of one's time and income.

Recently, however, I received a request from a large pharmaceutical company to assist in the design of a clinical trial,

and the proposed terms seemed to require that I sign away my right to criticize the product. One provision would prohibit me from entering into "any agreement or relationship to render services as ... adviser or consultant to, any other individual, firm, or corporation that would be inimical to or in conflict with" the aspects of the company's business covered by the agreement. Another would forbid me to engage, in any capacity, directly or indirectly, in "any business," with or without compensation, relating to the class of products under discussion—not just for the term of the contract, but for the year after as well. Those provisions could restrain me from providing candid advice to a regulator, a government official, or the editor of a peer-reviewed journal about the class of products on which I was consulting, even if the advice were based on publicly available information. I objected to those terms, as did a colleague who was offered the same arrangement.

While the terms were unacceptable, I wondered whether the National Institutes of Health, which supports my research, or Harvard University, as my employer, placed any restrictions on such agreements. Would Harvard be willing to review such a contract? And would it violate the terms of my employment, or my federal support, if I signed such an agreement, contracting away my ability to speak and write freely on matters related to my research and teaching?

The NIH directed me to the regulations of my university. Harvard administrators replied that they did not review private agreements between faculty members and companies and told me to check the university's policies on conflicts of commitment and interest. They did provide a suggested addendum to the contract that stated that my primary obligation was to Harvard, and that no provision of the contract could take priority over this obligation or restrict my teaching and research at Harvard. This was helpful, but when I asked Harvard's lawyer whether Harvard would restrict a faculty member from signing such an agreement without the addendum, I was referred to the university's policies on conflicts of commitment and interest.

Harvard's conflict-of-commitment policy forbids faculty members to undertake activities that take excessive time or intellectual energy away from their research and teaching. The conflict-of-

interest policy focuses on the risk that a faculty member might benefit financially from a research project, compromising objectivity in teaching or research or hindering fair treatment of trainees. Neither policy, however, directly deals with whether faculty members can sign away their academic freedom.

Discussions with my colleagues suggest that the problem is not limited to one pharmaceutical company, and that Harvard's hands-off approach is shared by many other, although not all, academic institutions. Indeed, I have reviewed the conflict-of-interest policies of more than 25 leading biomedical-research institutions, and only a handful have provisions that might restrict faculty members from contractually signing away their right to speak on matters of public record.

A university's refusal to review such agreements because they are private transactions between a company and a private individual seems to miss the point. To function effectively and maintain credibility in his or her primary role as a university employee—as a researcher, teacher, and possibly clinician—the faculty member must preserve the freedom to speak about matters of science and policy without obligation to commercial interests. Institutional requirements that a researcher disclose financial support from entities with an interest in the outcome of his research results, while important, do not solve the problem.

Some academics are evidently willing to accept restrictions on their speech and writing—otherwise, companies would not propose them. The practice very likely extends beyond biomedicine to other fields of study with commercial implications.

Academic employers should prohibit their faculty and staff members from consulting or other outside activities that limit their ability to speak and write freely using publicly available information. They should recognize that faculty members' acceptance of restrictions on speech or writing may conflict with their duties as teachers, practitioners, or researchers. Institutions could provide template language (like Harvard's addendum) and legal assistance to faculty members to ensure that they preserve their academic freedom and the credibility of the institution, while allowing professors to agree to maintain confidentiality of proprietary information disclosed to them. Universities could insist

that all such agreements be screened by legal counsel, as the institution's own integrity and prestige depend upon both public and internal perception of faculty independence. They might even be justified in "taxing" successfully negotiated agreements to support the cost of the screening.

Scientists and members of the public should also object to such restrictions. Such limitations compromise the interests of the employer, public supporters, and the biomedical field, and the academy more generally, as well as the public interest in transparency in scientific exchanges. Scientific progress depends on the freedom of all participants to express their views openly. Each of us therefore has an interest in preserving not just our own academic freedom but that of our colleagues. A scientist with a web of such agreements could find his or her research agenda significantly restricted: In place of a faculty member who might pursue the science wherever it leads, we may unknowingly have one who is contractually restrained from stating conclusions unfavorable to one or more clients. Academic freedom is not only a privilege for individual scholars but a public good that improves the functioning of the academic enterprise.

Government agencies that provide financial support should insist that contractual limitations on speech be disclosed, lest public funds and policy deliberations be compromised by commercial interests. Journals, conferences, and other venues that routinely request disclosures of potential conflicts should specifically ask whether the speaker has made any agreement restricting his or her freedom to speak openly about the topic—and should, in many cases, limit the participation of people who have.

Companies eventually may also recognize the risks of such provisions—including alienating the most qualified faculty consultants and losing access to cutting-edge research—and remove them from their contracts. Resistance by faculty members to these terms, and the cost of negotiating time and lost agreements, could eventually make such contracts too expensive to bear.

The struggle for academic freedom is often seen as one between the scholar and the government or the employer. The arrangements that I describe pose the threat that a faculty member will give up a

piece of academic freedom in exchange for the chance to do interesting work or obtain financial rewards. Academics correctly worry that their academic freedom will be curtailed by outside forces, yet the loss of that freedom is no less disturbing when it is willingly contracted away.

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