

## E-ALERT | Anti-Corruption

July 2012

### China Issues Rules Prohibiting Conflicts of Interest for Senior Healthcare Officials and Publishes a Code of Conduct for Medical Professionals<sup>1</sup>

China's Ministry of Health ("MOH") has issued two sets of important rules regulating the conduct of government officials and healthcare professionals. On December 26, 2011, MOH issued the *Rules Prohibiting Conflicts of Interest for Senior Officials in the Healthcare Sector* ("Conflict of Interest Rules"), effective on that date. On June 26, 2012, the MOH promulgated the *Code of Conduct for Professionals in Medical Institutions* ("Code of Conduct").

These actions represent MOH's latest efforts to implement ethics rules in the healthcare sector, following similar ethics rules and implementation guidelines issued in 2010 and 2011 regulating senior officials of the Communist Party of China ("CPC").

The rules impose certain new requirements on healthcare professionals that may substantially impact multinational pharmaceutical, medical device, and other healthcare companies operating in China. Companies should understand the new rules, closely monitor interpretative developments and regulatory enforcement actions, and modify compliance programs accordingly.

#### Conflict of Interest Rules

##### Definitions and Scope of Application

As used in the Conflict of Interest Rules, the term "Senior Officials" includes:

- (1) Members of core leadership groups in MOH and its provincial and local branches;
- (2) Division Directors in MOH and provincial branches, and Section Chiefs in municipal branches;
- (3) Members of core leadership groups in public hospitals and medical institutions; and
- (4) Head of departments in public hospitals and medical institutions.

The Rules define "conflict of interest" as including any potential conflict between the "public interest" over which a Senior Official has responsibility and the Senior Official's personal interest.

##### Prohibited Conduct

Articles 4 to 10 of the Conflict of Interest Rules specifically identify the following prohibited conduct:

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<sup>1</sup> A previous version of this client alert was distributed in January 2012 following a draft release for public comment of the *Code of Conduct for Professionals in Medical Institutions*. We have updated this alert to reflect the official promulgation of this Code and have modified the relevant sections to take into account its final drafting.

- (1) Senior Officials may not accept gifts, meals, travel, fitness benefits, or entertainment, when doing so may interfere with the impartial discharge of official duties.
- (2) Senior Officials may not violate rules against intervening or unduly influencing the procurement, bidding, and tendering of drug and medical devices or contracting of construction projects.
- (3) Senior Officials may not violate rules against intervening or unduly influencing permit and license review and approval, or regulatory supervision and enforcement.
- (4) A Senior Official's spouse, children, or children's spouses may not engage in drug or medical device sales or other profitmaking activities within the territories and business scope under the Senior Official's jurisdiction.
- (5) For Senior Officials in categories 1, 2, and 3 in the definition above, their spouses, children, or children's spouses may not hold senior positions representing a foreign party in a foreign wholly owned or joint healthcare venture within the territories and business scope under the Senior Official's jurisdiction.
- (6) Senior Officials may not, within the territories and business scope under the Senior Official's jurisdiction, violate rules against holding unapproved additional positions, or receiving compensation from approved additional positions in medical entities.
- (7) Within three years after leaving or retiring from government service, Senior Officials may not accept positions in for-profit medical entities or related healthcare manufacturing companies, or personally engage in for-profit activities within the territories and business scope under the Senior Official's jurisdiction.

Furthermore, when Senior Officials have a conflicting personal interest in the following parties or circumstances, they are required to proactively recuse themselves, explain the reasons, and not attempt to assert any influence in any way:

- officials under performance review;
- contractors in bidding, tendering, or construction projects;
- evaluation or assessment of research projects;
- manufacturing companies subject to review, approval, or testing;
- other circumstances the Senior Official believes to be a conflict; and
- other circumstances that may influence the Senior Official's impartial discharge of official duties.

## **Penalties and Enforcement**

The heads of the CPC committee and core leadership group of the health entities are responsible for implementing the Conflict of Interest Rules. Senior Officials who fail to observe the Rules may be subject to disciplinary actions and criminal liability if criminal violations are found.

## **Code of Conduct**

The Code of Conduct sets out general standards and specific requirements for virtually every type of healthcare professional to follow, including physicians, nurses, medical technicians, pharmacists, management personnel, and other staff. Chapter Two sets out a basic code for all healthcare professionals, including adhering to ethical principles, such as not soliciting or accepting financial benefits from patients, not soliciting or accepting kickbacks, commissions, or "engaging in any commercial entertainment arranged, organized, or paid for by healthcare companies, not participating in illegal advertising and promotion, not participating in insurance fraud, and not selling medical appointments or other permit numbers on the black market. The remaining chapters outline ethical conduct for each type of healthcare professional.

Compliance with the Code of Conduct is included as an important factor in the performance evaluation of the healthcare professional. Failure to abide by the requirements described in the Code of Conduct will be reflected in a professional's assessment and advancement opportunities. A violation could result in a range of disciplinary actions, including suspension of the professional's employment contract, revocation of the professional's professional license, and criminal liability.

## Implications

The new requirements established by the Conflict of Interest Rules and the Code of Conduct may have substantial implications for life science companies operating in China. We will continue to closely track developments in interpretation and enforcement and are able to assist clients in modifying compliance programs to conform to these rules.

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If you have any questions concerning the material discussed in this client alert, please contact the following Beijing-based members of our [Global Food and Drug practice group](#) or [Global Anti-Corruption practice group](#):

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