

**SUBJECT: MARKETING, ADVERTISING AND COMMUNITY EVENTS WITH
FOCUS ARRANGEMENT ENTITIES**

IMPLEMENTED: 04/08

EXPIRES: 03/13

REVIEWED:

PAGE 1

REVISED: 03/10

BD1.0002.0313

APPROVAL: CEO/President
APPROVAL: Executive Vice President/Assistant Administrator
APPROVAL: Compliance Committee
COMPLIANCE: All Departments
REFERENCE: Stark Law 42 U.S.C. §1395nn, and implementing regulations
REFERENCE: Anti-Kickback Law, 42 U.S.C. §1320a-7b(b), and implementing regulations
REFERENCE: Referral Services exceptions, 42 C.F.R. §100.952(f)
REFERENCE: AD1.0045 Compliance Plan
REFERENCE: AD1.0073 Physician Relocation/Recruitment Agreement
PREPARER: Legal Services

PURPOSE: This policy establishes guidelines for marketing, advertising and promotional activities in conjunction with, or which list or mention focus arrangement entities, in particular physicians that are members of the Medical Staff of Tomball Regional Hospital (“Physicians”). Parameters for entities participation in Hospital sponsored community educational events are also included.

SCOPE:
This policy applies to Tomball Hospital Authority d/b/a Tomball Regional Hospital (“Tomball, Hospital or TRH”) and any other entity or organization in which Tomball or affiliate owns a direct or indirect equity interest of 50% or more.

DEFINITIONS:

1. “Advertising” includes promotional materials that appear in newspapers, magazines, specialized newsletters, radio and television spots, billboards, mailers, brochures, news releases, on-hold messages, websites, web pages, web domains, web banners, web pop-ups and other forms of promotional materials.
2. “Active Medical Staff” shall mean that category of the medical staff defined in the Hospital’s Medical Staff By-Laws having the following minimum requirements: Practitioners who regularly admit, or personally provide services other than written consultation, to more than twelve (12) admissions or contacts for the purpose of evaluating the member’s quality of medical services and eligibility for designated privileges. Active medical staff members assume the responsibility of medical staff membership including, where appropriate, emergency service care, disaster plan assignment, consultation assignments and participation in peer review, quality/performance management activities and proctoring activities. Members of the active Medical Staff are eligible to vote, hold staff and department offices, and serve on the Medical Staff and department and governing board committees.
3. “Courtesy Medical Staff” shall mean practitioners who admit or provide services other than written consultation for twelve (12) or fewer patients per calendar

**SUBJECT: MARKETING, ADVERTISING AND COMMUNITY EVENTS WITH
FOCUS ARRANGEMENT ENTITIES**

IMPLEMENTED: 04/08

EXPIRES: 03/13

REVIEWED:

PAGE 2

REVISED: 03/10

BD1.0002.0313

year. If patient care services are provided to more than twelve (12) patients per calendar year, appointment to the Active Medical Staff category is required. Courtesy Staff are required to be members of the active staff to another hospital in which their regular participation in quality/performance management activities is documented and their performance is evaluated. Courtesy Staff members are not eligible to vote on medical staff or departmental matters, or hold medical staff offices.

4. "Immediate family member" or "member of physician's immediate family" means husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.
5. "Focus Arrangement" means an agreement between the Hospital and any Focus Arrangement Entity.
6. "Focus Arrangement Entity" means any individual or entity that is in a position to make or influence health care business or referrals to the Hospital; or is a physician who is a member of the Hospital's Medical Staff or is an immediate family member of a physician on the Hospital's Medical Staff.
7. "Medical Specialty" for purposes of this policy, shall be limited to those medical specialties listed as Member Boards of the American Board of Medical Specialties, including sub-specialties for which Member Boards grant sub-specialty certificates.
8. "Physician" means a duly licensed and authorized doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor.

POLICY:

- A. General.** All advertising must be submitted and approved by the CEO or designated alternate. Unless otherwise set forth in this policy, employees of the Hospital may not provide marketing services (e.g., preparation of advertising copy, placement of advertisement, promotion of a physician to the community) to any focus arrangement entity.
- B. Marketing and Advertising with Focus Arrangement Entities**
 1. A Hospital may pay the costs of advertising or marketing, which list, mention, or involve the participation of focus arrangement entities only when such advertising or marketing primarily benefits the Hospital.
 2. The Hospital may list members of the Hospital's Medical Staff in advertising or list members of the Hospital's Medical Staff on the Hospital's web page for the sole purpose of promoting the Hospital and as an incidental benefit of Medical Staff membership. Please see special rules below at Section C. regarding web-based physician finder services and web-based physician directories. Hospital may choose to list only Active Medical Staff members or may choose to list both Active Medical Staff and Courtesy Medical Staff. All members of the eligible category (i.e.

**SUBJECT: MARKETING, ADVERTISING AND COMMUNITY EVENTS WITH
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IMPLEMENTED: 04/08

EXPIRES: 03/13

REVIEWED:

PAGE 3

REVISED: 03/10

BD1.0002.0313

Active, Courtesy or both) of the Medical Staff, with privileges for the Hospital-based program, department or specialty being advertised shall be listed unless the eligible member elects not to participate. The primary focus of all such advertisements or individual web pages must be either on a particular Hospital department, Hospital-based program, or medical specialty, and the listing of Medical Staff must be ancillary to the Hospital advertisement or website and limited as described below.

3. If members of the Hospital's Medical Staff are to be listed in an advertisement or on the Hospital web page, then the advertisement or web page shall list all of the eligible category of the Medical Staff of the applicable department, program or medical specialty who wish to be so listed, and may list the following additional information regarding each such physician:
 - a. physician's name;
 - b. physician's medial specialty;
 - c. physician's board certification(s);
 - d. physician's undergraduate and medical education, and dates of graduation;
 - e. language spoken; and
 - f. a small thumbnail photograph of the physician.

A physician's office address and office telephone number shall be listed. Generally, no other information may be listed on the advertisement or web page. Except as otherwise provided in Section C. of this policy, weblinks, URLs, or web addresses of the Medical Staff member or the member's medical group or office affiliate's website may be included on the Hospital website. Advertisements shall not instruct the reader to contact or telephone the particular physicians listed in the advertisement or web page. Advertisements may include the phone number for the Hospital's Physician Referral Line.

Other information concerning a Medical Staff member may be listed if the Hospital enters into a joint marketing agreement with the physician, splitting the costs of an advertisement or promotion with the physician on a 50/50 basis (or other appropriate, substantiated percentage split of costs). Please see Section H of this policy.

4. An advertisement which lists the Hospital's Medical Staff members, or members of the eligible category (e.g. Active, Courtesy or both) of the Medical Staff, may also promote the Hospital's physician referral service, if the Hospital's physician referral service meets the requirements of the federal Anti-Kickback Safe Harbor and the requirements of applicable Hospital policy. Use of any physician referral service by the Hospital (other than the Physician Referral Line) must be reviewed and approved by the Hospital's Compliance and Ethics Department, Legal Services Department, and Administration. Use of the Physician Referral Line shall be in accordance with the Business Development Scope of Services

SUBJECT: **MARKETING, ADVERTISING AND COMMUNITY EVENTS WITH
FOCUS ARRANGEMENT ENTITIES**

IMPLEMENTED: 04/08

EXPIRES: 03/13

REVIEWED:

PAGE 4

REVISED: 03/10

BD1.0002.0313

Policy; BD3.0003. See also Section C below concerning web-based physician finder services and physician directories.

5. Except as otherwise provided in this policy, individually identifiable photographs of physicians may not be included in an advertisement paid for by the Hospital. Note that group photographs of all or a substantial portion of the eligible physicians in a medical specialty, with the physician identified in the caption, are acceptable. The Hospital shall document that all eligible physicians in the specialty were invited to participate in the photograph. In addition, a group photograph of a patient and their care team, with individuals identified in the caption, including the physician and Hospital staff, is also acceptable, with appropriate consents and releases. Other individually identifiable photographs may be permissible if paid for by the physician on a 50/50 basis or other appropriate, substantiated percentage split of costs as part of a joint marketing agreement.
6. Advertisements for Hospital-based programs, departments or medical specialties **having fewer than five members of the eligible category of the medical staff**, shall be submitted for special review and approval by the Hospital's CEO or designee. The special review shall be based upon the following criteria:
 - a. The focus of the advertisement or web page must be on the advertisement of the Hospital's programs and services only and not on the physician or physician group.
 - b. **The advertisement may mention only the Hospital's name of the program, the Hospital department, and the medical director's name, with no additional information provided regarding the medical director or any other physicians.**All other advertising of a Hospital program, department or medical specialty having fewer than five members of the eligible category of the medical staff must be through a joint marketing agreement consistent with Section H of this policy and other applicable policies.
7. Nothing herein will prohibit the Hospital from providing advertising or marketing assistance as part of a relocation agreement with a physician, if the arrangement complies with the Physician Recruiting/Relocation Agreements Policy; AD1.0073.

- C. Web-Based Physician Finders.** A web page or web link on the Hospital's website which promotes or links to the Hospital's web-based physician finder search engine or physician directory, is acceptable as part of an efficient and effective physician referral service. Consistent with applicable regulations and Hospital's policy on physician referral services, the Hospital may use the same objective criteria used by its physician referral service to determine which medical staff physicians are eligible to be listed on the web-based physician finder. The following information may be listed in a web-based physician finder or directory:

SUBJECT: **MARKETING, ADVERTISING AND COMMUNITY EVENTS WITH
FOCUS ARRANGEMENT ENTITIES**

IMPLEMENTED: 04/08

EXPIRES: 03/13

REVIEWED:

PAGE 5

REVISED: 03/10

BD1.0002.0313

1. physician's name;
2. physician's office address, telephone and facsimile number;
3. physician's medical specialty;
4. physician's board certification(s);
5. physician's undergraduate and medical education, and dates of graduation;
6. languages spoken;
7. a small thumbnail photograph of the physician; and
8. one weblink to the website of the physician's personal practice.

D. Press Releases and Announcements.

1. **Press Release.** A Hospital may issue a press release announcing a new member of the Medical Staff if such press releases **are issued for new Medical Staff members** of applicable specialties in the eligible category (e.g. Active, Courtesy or both). However, the Hospital may choose to issue press releases concerning only all new Active Medical Staff members. The press release may include:
 - a. physician's name;
 - b. physician's medical specialty;
 - c. physician's board certification(s);
 - d. physician's undergraduate and medical education, and dates of graduation;
 - e. language spoken;
 - f. a concise description of the physician's professional experience and background;
 - g. a photograph taken by Hospital personnel or supplied by the physician; and
 - h. the press release may include a quote from the physician.Press releases regarding a new member of the Medical Staff may be posted to the Hospital's website on the usual Hospital web page designated for press releases for a reasonable period of time.
2. **Announcements.** A Hospital may also send a formal announcement (i.e. a printed announcement in the form of a letter or on card stock) to its Medical Staff announcing that a new medical staff member joined the staff **if** such announcements **are issued for all new Medical Staff members** in the eligible category (e.g. Active, Courtesy or both). However, the Hospital may choose to issue announcements concerning only Active Medical Staff members and distribute them only to Active Medical Staff members. The announcement may include:
 - a. physician's name;
 - b. physician's medical specialty;
 - c. physician's board certification(s);
 - d. physician's undergraduate and medical education, and dates of graduation;

**SUBJECT: MARKETING, ADVERTISING AND COMMUNITY EVENTS WITH
FOCUS ARRANGEMENT ENTITIES**

IMPLEMENTED: 04/08

EXPIRES: 03/13

REVIEWED:

PAGE 6

REVISED: 03/10

BD1.0002.0313

- e. language spoken;
- f. a concise description of the physician's professional experience and background;
- g. a photograph taken by Hospital personnel or supplied by the physician; and

The Hospital shall not send announcements to others outside the Hospital, or pay for advertising announcing a physician's affiliation with the Hospital, unless the advertising or marketing is part of a recruiting relocation agreement with a physician and the arrangement complies with the Physician Recruiting/Relocation Agreements Policy (AD1.0073).

E. Articles Prepared for Hospital Newsletters or the Media.

1. **Articles Written by Hospital Staff:** The primary focus of articles written by Hospital staff and included in Hospital newsletters, or forwarded to local or national media, must be on the Hospital or its programs, clinical diseases or health education. Articles shall be submitted through the Marketing Department. Depending upon the facts and circumstances of the case, articles may include a limited number of quotes from the Hospital's medical staff physicians. Participation may be limited to Active Medical Staff members for the purpose of ensuring that authors are subject to the Hospital's peer and quality review processes. The Hospital may include the name of the quoted physician and a concise description of the physician's background and experience relevant to the subject matter of the article. The Hospital may also include in newsletters, or forward to the media, appropriate visuals generally expected by the media, including a small photograph of the quoted physician supplied by the physician or taken by Hospital personnel. The Hospital should make reasonable attempts to include from time to time quotations from all members of the eligible medical staff with qualifications and experience relevant to the subject matter of articles written by the Hospital staff.
2. **Articles Written by Medical Staff Members:** Articles written by Medical Staff members may be included in Hospital newsletters that are distributed to the Hospital medical staff and employees, or to the community in general, or articles to be distributed to local or national media, under the following circumstances. Articles shall be submitted through the Marketing Department. Participation may be limited to Active Medical Staff members for the purpose of ensuring that authors are subject to the Hospital's peer and quality review processes. Articles written by Medical Staff should primarily benefit the Hospital by focusing on a Hospital program. The Hospital may also include in newsletters, or forward to the media appropriate visuals generally expected by the media, including a small photograph of the quoted physician supplied by the physician or taken by Hospital personnel. Identification of the physician/author in Hospital newsletters may include the physician's

**SUBJECT: MARKETING, ADVERTISING AND COMMUNITY EVENTS WITH
FOCUS ARRANGEMENT ENTITIES**

IMPLEMENTED: 04/08

EXPIRES: 03/13

REVIEWED:

PAGE 7

REVISED: 03/10

BD1.0002.0313

name, medical specialty, and a concise description of the physician's background and experience relevant to the subject matter of the article. The description may not include the physician's office address or telephone number, or include any language instructing the reader to telephone or otherwise contact the particular physician. The article should be drafted by the physician and none of the content should be provided to the physician by the Hospital. The Hospital should make reasonable attempts to give all members of the Medical Staff or eligible Medical Staff category the opportunity to prepare articles for the Hospital newsletter.

- D. **Speaker's Bureaus.** The Hospital may promote a speaker's bureau to the community which identifies Medical Staff members and their expertise on specific subject matters. Participation may be limited to Active Medical Staff members for the purpose of ensuring that speakers are subject to the Hospital's peer and quality review processes. Information provided may include the physician's name, address, telephone number, practice area, language spoken, and a concise description of the physician's education and professional experience relevant to their expertise. The Hospital may not pay or reimburse the expenses of members of the eligible Medical Staff category who participate in a program through the speaker's bureau. Speeches shall be drafted by the physician and none of the text shall be provided to the physician by the Hospital.
- H. **Community Educational Events.**
1. **Events:** The Hospital may sponsor community educational events within the Hospital's service area, such as seminars and lectures, which include lecturers from the Hospital's Medical Staff. Participation may be limited to Active Medical Staff members for the purpose of ensuring that participants are subject to the Hospital's peer and quality review processes. The Hospital may provide or pay for the room reasonably necessary to hold the seminar. For educational events held outside the Hospital's service area, which include lecturers from the Hospital's Medical Staff, the Hospital may pay for the room reasonably necessary for the event, but may not under any circumstance pay for any of the physician's travel or lodging expenses. A member of the Hospital's Administrative team, Business Development or Marketing shall supervise the distribution of Hospital promotional items.
 2. **Participating Physicians:** If a community educational event is repeated on a regular basis, then all members of the eligible category of the Medical Staff qualified to speak on the subject matter shall be offered the opportunity to speak and the opportunity to speak rotated amongst those members of the eligible category of the Medical Staff willing to speak. The Hospital shall document their reasonable attempts to include all such members of the Medical Staff qualified to speak on the subject matter.
 3. **Promotion of the Educational Event:** When promoting a community educational event, the Hospital may identify the physician lecturing at the

SUBJECT: **MARKETING, ADVERTISING AND COMMUNITY EVENTS WITH
FOCUS ARRANGEMENT ENTITIES**

IMPLEMENTED: 04/08

EXPIRES: 03/13

REVIEWED:

PAGE 8

REVISED: 03/10

BD1.0002.0313

event, and include a concise description of the physician's background and experience related to the subject matter of the event. The promotional material may also include a small photograph of the participating physician supplied by the physician or taken by Hospital personnel.

4. **The Educational Event:** The physician lecturing at the event may distribute business cards to attendees as a business courtesy, but may not distribute other promotional items or materials, such as information flyers (concerning their own practice) or gifts at the event. In addition, all meals, gifts and/or discounts for attendees of the event must comply with the Hospital's Business Courtesies to Physicians and Immediate Family Members Policy; AD1.0081. In consideration of the physician's appearance on behalf of the Hospital at a community educational event, the Hospital may provide or reimburse the physician for one meal, and may reimburse the physician for mileage at the I.R.S. approved rate. The Hospital shall not provide any additional consideration to the physician unless otherwise allowed by other Hospital policy and documented in a written agreement. The Hospital must confirm the physician's participation at the event in writing. A member of the Hospital's administrative team, or other appropriate Hospital manager, shall attend each event and supervise the distribution of Hospital promotional items.
5. **Television/Radio/Internet Based Broadcasts.**
 - a. **Broadcasts:** The Hospital may sponsor television and radio programs or web-based broadcasts of community educational events that include lecturers and participants from the Hospital's Medical Staff and which are repeated on a regular basis for the benefit of the community. Broadcast events must focus on either: (a) services offered by the Hospital; (b) preventive care; or (c) healthcare subjects of interests to the community. The Hospital may pay for the reasonable production costs, broadcast costs and promotional costs of the broadcast educational event. The format of broadcast educational events may include lectures, seminars, or call-in question and answer formats. The audience shall not be instructed to contact or telephone the particular physician(s) participating in the program.
 - b. **Disclaimer:** The event shall begin with a disclaimer approved by Administration stating that: (a) the program is a community service and is not intended to be a substitute for medical advice; (b) audience members having questions about their health should make an appointment to see their personal physician; and (c) any opinions or statements made during the program are those of the individuals or physicians making the statements and are not the opinions or statements of the Hospital or other sponsoring party.

SUBJECT: **MARKETING, ADVERTISING AND COMMUNITY EVENTS WITH
FOCUS ARRANGEMENT ENTITIES**

IMPLEMENTED: 04/08

EXPIRES: 03/13

REVIEWED:

PAGE 9

REVISED: 03/10

BD1.0002.0313

- c. **Participants:** All Medical Staff members qualified to speak on the subject matter shall be offered the opportunity to speak and the opportunity to speak rotated amongst those members of the medical staff willing to speak. Participation may be limited to Active Medical Staff members for the purpose of ensuring that participants are subject to the Hospital's peer and quality review processes.
 - d. **Additional Requirements:** The script, program outline, and/or format of proposed television radio/internet based broadcasts must be submitted for approval through Administration, in addition to any advertisements promoting the broadcast. Television/radio/internet based broadcasts not meeting all of the foregoing criteria may be the subject of a joint marketing agreement, which must be reviewed and approved by the Hospital's CEO or designee.
- 6. **Form Letter.** Attached to this policy is a form letter for confirming a physician's participation in a community educational event conforming to the above-described policy (Attachment "A").
- I. **Joint Marketing.** Nothing herein prohibits the Hospital from entering into a joint marketing agreement with a physician, splitting the costs of an advertisement or promotion with the physician on a 50/50 basis (or other appropriate, substantiated percentage split of costs). Joint marketing agreements must be reviewed and approved by the Hospital's Legal Services Department before submitting any advertisement generated pursuant to the joint marketing agreement through Administration.

TOMBALL REGIONAL HOSPITAL

POLICY

SUBJECT: **MARKETING, ADVERTISING AND COMMUNITY EVENTS WITH
FOCUS ARRANGEMENT ENTITIES**

IMPLEMENTED: 04/08

EXPIRES: 03/13

REVIEWED:

PAGE 10

REVISED: 03/10

BD1.0002.0313

BD1.0002.0313 **MARKETING, ADVERTISING AND COMMUNITY EVENTS WITH
PHYSICIANS**

COMPLIANCE: All Departments

See BD10002form-0313

Attachment "A" – Form Sample Letter Confirming Physician's Participation in
Community Educational Event

TOMBALL REGIONAL HOSPITAL
SUBJECT: **MARKETING, ADVERTISING AND COMMUNITY EVENTS WITH
FOCUS ARRANGEMENT ENTITIES**

POLICY

IMPLEMENTED: 04/08

EXPIRES: 03/13

REVIEWED:

PAGE 11

REVISED: 03/10

BD1.0002.0313

ATTACHMENT "A"

Sample Form Letter for Confirming Physician's Participation in a Community Education Event

[TO BE TYPED ON HOSPITAL LETTERHEAD]

[Date]

_____, M.D.

Dear Dr. _____:

In order to meet regulatory concerns, I am providing this letter to document an agreement between Tomball Regional Hospital ("Hospital") and yourself regarding your lecturing on the subject of _____ at Hospital's community educational event entitled "_____" and scheduled for _____ (date and time). You are invited to participate in the meal provided at the event. You may distribute business cards, but you may not distribute other promotional items or materials, such as informational flyers or free gifts at the event.

Please understand that the Hospital's reimbursement of your payment of the modest cost of your meal for these meetings is in no way designed to induce you to refer patients to the Hospital. Rather, the cost of the meal is in partial exchange for the time and energy you have committed to the lecture. I wish to take this opportunity to thank you in advance for our willingness to give your valuable time to serve in this capacity.

If you concur with the content of this letter, please execute below.

Sincerely,

President/CEO

I, _____ (Printed Name), understand and agree with the content of this letter.

_____, M.D.
(Signature)

_____ (Date)