

# 411 Compliance

November 2018

**UAB** employees who participate in external activities must not cause, or appear to cause, a conflict of interest with or commitment to their employment. This is especially important for public institutions of higher education, whose employees are subject to the Alabama Ethics Law. The UAB policies and guidelines presented in this issue help faculty and staff avoid infringement, allowing them to pursue fully the professional growth to which they aspire within the law.

## Professional Service Opportunities Must Be Carefully Considered, Receive Approval

UAB encourages its employees to participate in activities outside the University that promote scholarly and professional growth and to spark new business ventures that add to the vitality of the Birmingham business landscape. However, such activities must be conducted in a way that fosters public confidence in the integrity of UAB's mission to serve students, patients, and the world's need for knowledge and ground-breaking solutions. This means employees must provide all professional services in compliance with the **Alabama Ethics Law** and the UAB Enterprise **Code of Conduct** and **Conflict of Interest and Conflict of Commitment Policy**. This is primarily achieved by obtaining advance approval of external activities from supervisors, for faculty, staff grade  $\geq 20$ , and investigators through submission of a **Request for External Activity Approval Form**.

Before approving external activities, supervisors must consider whether the professional service in question falls within UAB's legal, policy, and ethical standards. If pursuit of the activity falls short of any of the following three statements, then it could violate UAB policy and/or Ala-

*Continued on page 2*

### External activities must . . .



**Be compatible with UAB interests.**



**Not compete with University services.**



**Not interfere with fulfillment of duties.**



**Avoid use of UAB resources.**



**When in doubt, raise questions prior to approval.**

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### UAB

#### COMPLIANCE & RISK ASSURANCE

The University of Alabama at Birmingham

*Compliance 411* is published by the Office of Compliance & Risk Assurance of The University of Alabama at Birmingham. Feedback from the UAB community is welcome. Please email [compliance@uab.edu](mailto:compliance@uab.edu) to join our distribution list.

Objectives of *Compliance 411*:

- To raise awareness
- To communicate important developments
- To foster transparency

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## Professional Services Opportunities *Continued from page 1*

bama Ethics Law and potentially result in disciplinary and/or legal action.

1. **The activity must be compatible with UAB interests and must not compete with University services;**
2. **The activity must not interfere with performance of responsibilities to UAB; and**
3. **The activity must avoid use of UAB resources.**

If in doubt, consult school leadership or the **Office of Compliance & Risk Assurance**, particularly in circumstances where the professional relationships could be complex and affect established agreements between the University and other parties.

Additionally, employees participating in external activ-

ities are required to complete a one-time External Activity Training Course in UAB's Learning Management System that describes these standards in more detail. If you fall into this category and have not yet taken the course, you may enroll [here](#).

Ultimately, decisions about whether to pursue professional activities outside UAB full-time employment are to be made in the best interest of students, patients, and the community we serve and must not conflict with one's primary responsibilities to the University.

*Please see the related article (p. 3) on serving as an expert witness for in-depth information on one common type of external activity.*

## Do's & Don'ts of Alabama Ethics Law



Specific guidelines and do's and don'ts for UAB employees can be found in the Alabama Ethics Commission's **Guidelines for Public Officials and Employees**. For more information on complying with Alabama Ethics Law and related UAB policies, visit **UAB's webpage on Compliance with Alabama Ethics Law and Related UAB Policies**. Topics covered include but are not limited to:

- Duty to file a State of Alabama statement of economic interest with the State;

- UAB employees selling textbooks;
- UAB policies on patents, copyright, and intellectual property;
- Prohibition of the use of UAB property for personal gain;
- Using position for financial gain and rules for contracts with UAB;
- Political activity; and
- Acceptable use of UAB computer and network resources.

## Holiday Heads Up: Alabama Ethics Law & Receipt of Gifts

Throughout the year and especially during the holidays, UAB employees should be mindful that Alabama law restricts items they may receive from vendors. As a public employee with expectations of appropriate stewardship, a UAB employee may not use their position for private gain or receive special benefits as a result of purchasing decisions. This includes gifts, entertainment, and personal use of promotional rebates on supplies purchased for UAB.

However, items of *de minimis* value—such as greeting cards, plaques or other items intended solely for presentation, promotional items commonly distributed to the general public, and items that have no resale value or value to others — are permissible under state law. The statute defines *de minimis* as a value of \$25 or less per

occasion with an aggregate of \$50 or less in a calendar year from a single provider.

Before accepting a personal gift from a business partner, employees should find out if it is allowed by state ethics law and school or unit policy on receipt of gifts.

If it is not permissible, it should be declined and returned to the donor, the donor should be paid the gift's market value, or it should be given to charity through the UAB Development Office. Within reason, consumable items that may be shared among co-workers, like a tin of cookies or popcorn, may also be placed in a common break room to minimize any personal benefit.

For more information, visit Compliance & Risk Assurance's **Alabama Ethics Law webpage**.

## Important Considerations for Expert Witnesses

As with all external activities, providing expert witness services to an attorney or law firm requires prior approval from department and school leadership. Because these types of services involve a heightened risk of infringing on a UAB employee's duties and conflicting with the interests of the UAB enterprise, Office of Counsel must be consulted about proposed expert witness activities prior to approval by department and school leadership.

There are important considerations in deciding whether to accept an expert witness opportunity. This is true especially if:

- UAB is a party to the lawsuit;
- The lawsuit involves a claim related to a pharmaceutical drug or medical device;
- The lawsuit involves a medical malpractice claim filed in Alabama; or
- Opinions are based on data resulting from work conducted at or on behalf of UAB.

Through the electronic Request for External Activity Approval process, UAB employees will be required to

attach an official letter from the law firm about the scope of work and proposed compensation as well as contact information of the coordinating attorney for details about the case.

Similar to other types of external activities, keep in mind with expert witness activities that:

- Advance approval is required pursuant to UAB's online process;
- Activities are conducted outside the scope of a UAB team member's employment, so UAB is not responsible for any proceeding or cause of action arising out of the external activity;
- Use of UAB resources must be avoided; and
- UAB team members must not hold themselves out as a representative of UAB or imply that their opinions are shared or endorsed by UAB.

In summary, circumstances around expert witness activities require interpretation and judgment, and should be seriously considered with the UAB Office of Counsel before agreeing to do anything.

## Export Controls May Be Applicable to Your Work

*Use these questions to determine whether export controls are required in the context of your research, project, or international travel.*

For reasons of national security and trade protection, the United States enacted export control laws in the 1940s to govern the transfer of certain information, items, or technologies to foreign countries and foreign persons. Violations of these export control regulations can lead to **significant civil and criminal penalties** for individuals as well as institutions. Therefore, UAB and its employees are required to exercise due diligence in evaluating whether a particular transfer of items, information, software, or technology requires an export license from the federal government.

The "Yes" or "No" questions below are part of a decision-making process that can assist you in determining whether an export license may be required. If you answer "Yes" to any of the eight questions below, please **contact the Office of Compliance & Risk Assurance** immediately. There are some basic terms that you will need to understand, particularly *export*, *deemed export*, *item*, and *foreign national*. Please refer to the **definitions shown here** before answering the questions below. You may view the entire UAB *Export Control Decision Tree* process **here**.

### Questions for determining if an export license is needed:

1. Are you sharing, transmitting, or transferring UAB-developed, non-commercial encryption software in source code or object code (including travel outside the country with such software)?
2. Do you know or have any reason to believe that the item, information, or software to be shared, shipped, transmitted, or transferred will support the design, development, production, stockpiling, or use of nuclear explosive devices, chemical or biological weapons, or missiles?
3. Is the item, information, or software under a Non-Disclosure Agreement or a Confidentiality Agreement central to the research program, and/or do the disclosure restrictions affect the ability to publish the research results?
4. Did an external sponsor, vendor, collaborator or other third party provide, under a Non-Disclosure Agreement or a Confidentiality Agreement, the item, information, or software to be shared, shipped, transmitted, or transferred? *Continued on page 5*

## Around Campus, You May Be on Camera.

UAB is committed to enhancing the safety and quality of life on its campus by integrating state-of-the-art technology to support the best practices of policing, safety, and emergency management. A critical component of UAB's approach to public safety is the use of closed circuit television (CCTV). To regulate of the use of CCTV cameras that monitor and record public areas, a draft *Closed-Circuit Television Camera Policy* is currently being considered by the University.

According to Zandral Washington, UAB Deputy Chief of Police, "The use of CCTV is a valuable tool in assisting the UAB Police and Public Safety Department with crime prevention, detection, and the identification of witnesses and suspects. Therefore, we look forward to the implementation of this policy."

The fundamental concept of the new policy is to establish standards for use of CCTV and video monitoring at UAB within the law and to balance appropriately individuals' rights to privacy with UAB's responsibility for campus security and response in the event of an emergency. These standards are manifest in the following principles that form the basis of the policy. Here is a preview of the policy's main points:

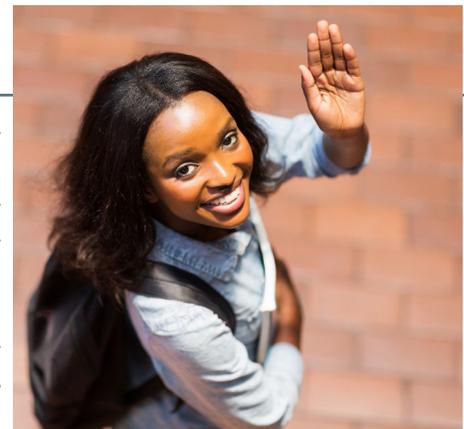
1. Use of CCTV at UAB is limited to uses that do not violate any individual's reasonable expectation of privacy as defined by law.
2. Use of CCTV for security purposes must be conducted professionally, ethically, legally, and in a manner consistent with all existing University policies, including the **Equal Opportunity and Non-Discrimination Policy** and **Title IX Sexual Assault and Sexual Misconduct Policy**.

3. Camera systems that are not connected to the University's main system (e.g., home surveillance systems commercially available) are prohibited.

4. Any diversion of UAB's CCTV technologies for purposes not related to safety, security, or emergency management is prohibited.
5. UAB employees involved CCTV technologies must be properly trained in the responsible use of UAB's CCTV.
6. Employee access to recorded videos must be authorized by the CCTV Monitoring Committee and University Counsel.

Comprising UAB public safety, emergency management, physical security, risk management, and University Relations executives, a CCTV Committee will conduct ongoing review of UAB's use of CCTV and video monitoring to ensure systems are implemented accordingly. The CCTV Committee will also receive petitions to forgo the installation of a proposed camera or the removal of an existing one for those with increased concerns for privacy or confidentiality when entering certain sensitive locations on campus.

Along with the new CCTV policy, a set of procedures for the deployment and management of CCTV is being developed.



### OFFICE OF COMPLIANCE & RISK ASSURANCE *Areas of Focus*

Access information on these Compliance & Risk Assurance areas of focus by clicking on a topic below:

***Alabama Ethics Law***

***Effort Reporting***

***External Activities***

***International Travel***

***University Policy Review & Development***

***Conflicts of Interest/Commitment***

***Export Control***

***Federal Open Payments Law***

***Records Retention***

## Should Records Ever Be Kept Beyond the Prescribed Retention Period? Yes, in Some Cases.

Both the **UAB Records Retention Schedule** and the **State of Alabama Records Disposition Authority** outline minimum periods that UAB records and documents must be retained. After the minimum retention period is reached, that record should be disposed of unless it still serves a legal, operational, or historic purpose. No record should be retained past its retention period unless it still holds such **documented value** to UAB based on one of the following justifications:



**1. Legal Hold:** The records are the subject of a legal hold because a member of the University Office of Counsel has determined, and communicated in writing, that records may have relevance in future litigation.



**2. Litigation Discovery:** The records are the subject of a litigation discovery request.



**3. Public Records Requests (Freedom of Information Act and Alabama Open Records Act):** The records are subject to FOIA and/or the Alabama Open Records Act, as determined by University counsel.



**4. Operational Value and Need:** The records serve a necessary operational value that outweighs the risk of retaining the records. The operational-value justification for keeping records beyond their prescribed retention period should be used sparingly and be restricted to circumstances where there truly is a need. That need should be documented, given the risks of having too many records and holding them for too long.



**5. Historic:** The records could be considered historic at some point in the future. The UAB Records Retention Schedule accounts for historic rec-

ords, as many high-level campus administration records are retained permanently. However, there will be circumstances where records may not have originated from the administration, but still may be historically relevant to the institution. Please contact UAB Archives at [uabarchives@uab.edu](mailto:uabarchives@uab.edu) for assistance in determining if records are of historic importance.

If a department, college, or school decides to retain records for longer than the UAB Records Retention Schedule prescribes, the **Office of Compliance & Risk Assurance** or University Office of Counsel (205) 934-3474 should be consulted regarding the reasons for retaining the records. As always, the reasons for doing so must be documented.

## Export Controls *continued from page 3*

5. Is the item being shared, shipped, transmitted, or transferred a defense article other than information or software on the ITAR's US Munition List (USML)?
6. Is the information or software being shared, shipped, transmitted, or transferred technical data on the ITAR's US Munition List (USML)?
7. Are you shipping or transferring items on the Commerce Control List (CCL) of the Export Administration Regulations (EAR)?
8. Are you sharing, transmitting, or transferring technology (information) or software code on the Commerce Control List (CCL)?

*This material is adapted from the basic design and content of **Stanford University's Export Controls Decision Tree**. We appreciate Stanford in granting us permission to use its content for the benefit of UAB.*

## Compliance CHALLENGE

Read the hypothetical scenario below, and click on an answer A.-E. to enter a drawing for one of two \$10.00 Amazon gift certificates to be held Jan. 3, 2019. Only those with addresses ending in uab.edu or uabmc.edu qualify.

*Willa is a full-time UAB faculty member who has responsibilities in teaching, research, and patient care. Her spouse has just launched a tech company that strives to connect patients and families with others with the same clinical diagnoses for purposes of networking and support. When should Willa disclose this ownership interest?*

- A. Within 30 days of her spouse acquiring the interest.
- B. Before taking on any consulting role with the company.
- C. In any discussion she participates in where a decision is to be made about UAB contracting with the company.
- D. As directed by the Conflict of Interest Review Board Office in presentations or publications if subject to a conflict of interest management plan.
- E. All of the above.

## Congratulations to Compliance Challenge winners!

By participating in last issue's Compliance Challenge, Jamie Erwin and Allyn Holladay were entered into and won a drawing for two \$10.00 Barnes & Noble gift certificates. To participate in this issue's Challenge and enter a drawing for one of two \$10.00 Au Bon Pain gift certificates, see the Compliance Challenge to the left. This issue's Compliance Challenge topic is conflict of interest and conflict of commitment.



*Risk Management Associate Director Jamie Erwin proudly displays his Barnes & Noble gift certificate. Not pictured is our second winner, Allyn Holladay, Program Director I, SPH Department of Environmental Sciences.*

## Code of Conduct Corner

### Standard of Conduct: Acknowledge and Appropriately Manage Conflicts of Interest and Commitment

Full-time UAB faculty and staff owe their primary professional allegiance to UAB and its mission to excel in the highest levels of education, patient care, research, and scholarship. External professional activities, private financial interests, or the receipt of benefit from third parties can cause an actual or perceived conflict between UAB's interests and an individual's private interests. To fulfill their obligation to be objective and impartial in making decisions on behalf of UAB, UAB community members are expected to:

- Accept benefits, awards, and prizes from external entities only in accordance with Alabama Ethics Law and established UAB policies and standards;
- Disclose relationships with third parties, such as consulting, board membership, expert witness,

or other professional services in accordance with UAB's external activity approval process to ensure objective judgment in purchasing, research, and other UAB business and to identify any potential or actual conflicts of interest;

- Adhere to any management plans created to manage actual or perceived conflicts of interest; and
- Ensure one's personal relationships do not interfere with objective judgment in decisions affecting UAB employment or academic progress of any UAB community member.

For more information, please see the **UAB Enterprise Code of Conduct** and **Conflict of Interest and Conflict of Commitment Policy**.