FAQs on Accepting Gifts from Vendors and Patients

1. **Why can't we accept gifts from vendors if these gifts help offset the cost of operating Parkland? We’re a public hospital and we care for a lot of indigent patients, with a portion of the cost borne by the taxpayer. Why is it wrong to accept gifts from vendors that help reduce the burden on the taxpayer?**

   First of all, there’s no such thing as a free lunch. Vendors provide gifts with the expectation that they’ll receive something in return – our business. This creates a conflict of interest and places us in a position where we make, or appear to make, purchasing decisions based on gifts provided by the vendor. All purchasing decisions must be free of actual or apparent conflicts of interest. Apparent conflicts of interest can damage the reputation of Parkland just as actual conflicts of interest can.

   Secondly, there are very tough laws governing the exchange of remuneration between a vendor and a customer who pays for the vendor’s products and services in whole or in part with Federal program dollars e.g., Medicare and Medicaid funds. One law is the Federal anti-kickback statute. The anti-kickback statute makes it a crime to knowingly and willfully solicit or receive any remuneration (including gifts) where the intent is to induce or reward the purchase of items or services reimbursable by a Federal health care program. Remuneration includes the transfer of anything of value, directly or indirectly, overtly or covertly, in cash or in kind. It could include gifts, meals, free or discounted transportation, lodging, tickets to sporting events, jewelry, etc. In other words, accepting a gift, free transportation, entertainment or anything else of value from a vendor could potentially implicate the anti-kickback statute.

   When in doubt about whether to accept a gift from a vendor, ask yourself the following question: Is the vendor providing this gift to reward me for the business I give him or trying to induce me to give him more business? If the answer is yes, then accepting the gift could implicate the anti-kickback statute. We know that in business there are many common practices involving the giving of items of value to customers or potential customers. That’s why the policy on Gifts was written. It provides you with guidance on accepting gifts from vendors and helps ensure that our business practices are within the law. Please know that in an anti-kickback analysis the existence of a legitimate reason or honorable purpose is irrelevant if only one purpose of the gift is to induce or reward the referral or recommendation of business paid for or reimbursed by Federal program dollars. Cost avoidance, reducing the taxpayer’s burden and helping the indigent are all legitimate reasons for accepting gifts from vendors, but if one purpose of the gift is to reward or induce the referral or recommendation of business, the anti-kickback statute is violated.

   Public hospitals, charitable organizations and governmental entities are not exempt from the anti-kickback statute. It applies to any entity that receives Medicare or Medicaid reimbursement, and penalties can be severe. An individual convicted of violating the statute is guilty of a felony and may receive a prison sentence of up to five years and have to pay a fine of up to $25,000. Is any other reason needed for being wary of accepting gifts from vendors?

2. **I know we can’t accept gifts from vendors. Can I instead direct a vendor to make a donation to the Foundation for a designated educational fund that I can then draw upon to pay for continuing education for my staff? I haven’t budgeted enough to pay for all the continuing education my staff needs.**

   Although this appears to be a good use of donated funds for several reasons, including reducing departmental expenses and therefore cost to the taxpayer, this is an example of indirect remuneration from a vendor who is paid with Federal program dollars. This practice would not only violate Parkland’s policy on accepting gifts from vendors, but would appear to implicate the anti-kickback statute. It is not an acceptable practice.

3. **A physician who works on my unit talks in glowing terms about a vendor who buys him expensive dinners, takes him on golf outings and gives him extravagant sounding gifts. Recently, the physician went on an all expense paid trip to Las Vegas, courtesy of the vendor. When he returned, the physician regaled us with stories of wild nights out on the town, including huge bar tabs, lobster and caviar feasts, and top entertainment at well known establishments. This physician is considered an expert in his field and helps us evaluate new products from the vendor. We rely on his evaluations when deciding whether to purchase a product. I know we have a policy at Parkland that prohibits employees from accepting...**
such gifts. Does the policy also apply to physicians who are not employees of Parkland?

Avoiding conflicts of interest (which includes accepting gifts from vendors) is discussed in the Parkland Code of Conduct and Ethics (the “Code”). The Code applies to all members of the Parkland team, including physicians who are not employed by Parkland. Any physician who is in a position to influence a purchasing decision should be free of all conflicts of interest with respect to vendors whose products or services are under consideration. Ideally, a physician who has a conflict of interest will not participate in the evaluation or decision-making process. At the very least, the physician should disclose the conflict and recuse himself from voting or making recommendations on the purchase. In the situation described above, the physician is receiving significant remuneration, i.e., items or services of value, from the vendor and then providing an evaluation of products offered by the vendor which is relied upon by Parkland personnel. This is an obvious conflict of interest with respect to the decision-making process. And in an anti-kickback analysis, it is immaterial whether remuneration actually induces the physician to recommend or refer, it is sufficient that the remuneration may induce the physician to recommend or refer.

4. We, and the physicians on our unit, would like to purchase 12 pieces of new medical equipment. Our capital budget will only allow us to purchase 11 pieces. A physician told one of our vendors about our dilemma and the vendor graciously offered to make the purchase for us. (Isn’t it wonderful there are such generous people in the world?) I told him to make the check out to the Foundation to a fund designated for the equipment purchase. I can then requisition the money and purchase the equipment. We’re not supposed to accept gifts from vendors and I don’t want to get Parkland in trouble, but honestly, do they really expect us to run a hospital with the budget they give us?!?!?!

Yes, they do. If the vendor wishes to make a donation, he or she should contact the Foundation about making an unrestricted gift. Ideally, any such donation accepted by the Foundation would be distributed using objective criteria, with the Foundation having absolute, independent, and autonomous discretion as to the use of the funds. You should not accept or request a donation from the vendor.

5. Because money is tight, I would like to ask one of our vendors to sponsor a luncheon for the staff. This is one way I can enhance employee satisfaction without costing the company any money. Can I do this?

No. Our policy prohibits solicitation of gifts from vendors – no matter the value of the gift.

6. A long-time vendor offered to throw a pizza party for the staff. May I accept the offer?

Generally, yes, as long as you haven’t solicited the gift from the vendor and the value of the gift is less than $50 per person and $1000 in the aggregate. Parkland policy also prohibits accepting more than two perishable or consumable gifts per vendor per year.

7. A patient sent me a basket of cookies in appreciation of the wonderful care she received at Parkland. May I accept the gift?

Yes. The patient should be thanked and the cookies shared with the entire department. If the patient continues to send you gifts, notify your supervisor. You or your supervisor should politely let the patient know that you can not continue accepting these gifts.

8. A patient tried to slip me a ten dollar bill. I think she was trying to tip me for the care I provided. She was such a nice lady I had a hard time refusing. How should I have handled this situation?

It’s gratifying to receive a compliment from an appreciative patient, but it’s also important that no patient ever has the impression that tips are expected or necessary in order to receive excellent care. While this lady may have simply been trying to reward you for your efforts, you should gently let her know that it was a privilege taking care of her and knowing that she’s happy with your care is all the thanks you need.

9. A vendor wants to give me two dozen tickets to Six Flags – no strings attached. I was thinking of distributing the tickets to selected staff to reward them for outstanding performance. Is this OK?

If you believe the value of the tickets is more than $49.99 per ticket or $250 in the aggregate, the gift should be graciously refused with an explanation of our policy on accepting gifts from vendors.
10. I’m currently negotiating a contract with a new vendor. We still have a few points to iron out. She’s coming to town next week and wants to take me to lunch. Can I have a business lunch with her to discuss the contract terms? There’s a new restaurant in town I’m dying to try, but it’s pretty expensive. I think I’ll ask her to take me there.

Nominal meals provided at business meetings are not considered gifts; however, you should be careful not to solicit expensive meals from a vendor. It’s important in these situations to avoid even the appearance of a conflict of interest. The appearance of a conflict of interest could potentially damage Parkland’s reputation as much as an actual conflict of interest. Try to select a restaurant that you know is reasonably priced.

11. A vendor called and sent me some materials concerning a proposal for services. I’m very interested in what he has to offer. He invited me to play a round of golf with him to discuss the proposal. May I accept his offer?

Although Parkland policy allows employees to attend social events in order to further business relationships where the cost associated with the event does not exceed $100, employees should be continually mindful of avoiding even the appearance of a conflict of interest. It’s likely the vendor’s proposal could be discussed in a more appropriate setting such as your office.

12. One of our vendors distributes small promotional items to department staff, including pens and coffee mugs displaying the vendor’s logo. Can we accept these gifts?

Yes, as long as the items are of nominal value. But please accept only a reasonable number of these items and only accept gifts that are in good taste and do not detract from Parkland’s professional image. Parkland is not in the business of advertising for any vendor and we should be careful not to give the impression that we are promoting any particular vendor’s products.

13. We are considering purchasing a new software system. The vendor would like to pay all of the expenses associated with having several individuals perform a site visit at a hospital currently using the system. These visits provide us with valuable information when deciding on a purchase, but the cost of the visits is very expensive. May we accept the vendor’s offer?

No. Travel expenses associated with site visits may not be paid for or reimbursed by vendors. These expenses, when authorized, will be paid by Parkland.

14. One of our vendors is sponsoring a two-day seminar on clinical topics relevant to my work. I’ve been asked to participate on a panel of experts to discuss a topic for which I am considered an expert. In exchange for participating in the panel discussion, the vendor will pay for my lodging, meals and transportation. May I accept the offer?

Although this appears to be an offer to provide consideration for your services, it’s likely the value of the consideration (lodging, meals and transportation) exceeds the fair market value of the services provided. In any case, Parkland policy is very clear that employees may not accept payment or reimbursement from a vendor for travel related expenses.

15. A vendor told me he would like to make a very generous donation to support one of the programs my department administers for the poor. I’m passionate about this program and would like to see it expanded so that more people can benefit from the services we offer. He asked me how he should make out the check. Under these circumstances, may I accept the donation?

No. Accepting the donation would create a conflict of interest for you. Thank the vendor for the offer but politely let him know that you can not accept the donation. You may suggest that the vendor contact the Foundation to discuss gift giving opportunities.