GENERAL COUNSEL NOTE

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What does insider trading have to do with University research? You may think that only people involved with Wall Street have to be concerned about insider trading. Or people like Martha Stewart. In fact, it was information about research, an inside tip, that led to the investigation that sent Martha Stewart to prison. Martha Stewart allegedly received a tip from her broker that the FDA was going to reject a new drug application for ImClone, significantly affecting the value of the company's stock. Martha Stewart sold her ImClone stock shortly before the FDA application was rejected, preventing a significant loss from the stock's subsequent decline in value.

In 2005, the Senate Committee on Finance requested the U.S. Securities and Exchange Commission to investigate physicians who advise Wall Street firms about new drug research. The purpose of the inquiry was to determine whether physicians were divulging information to Wall Street about the progress of ongoing drug research that could be used in making investment decisions about biotech corporations. If the physicians disclosed information about their research that was not available to the general public, they may have violated federal insider trading laws. Also, the Securities and Exchange Commission just recently charged three physicians in Florida with insider trading, because they allegedly used information gained from their relationships with pharmaceutical companies to buy stock and provided trading tips to others.

So what does insider trading have to do with research? Researchers often have knowledge of the progress of research studies before the results of those studies are published. The central issue for insider trading is the use of information that is not yet available to the general public to make decisions about the purchase and sale of stock. Corporate insiders such as company directors and officers and other individuals who are engaged by a corporation have access to information about that corporation that is not publicly available. Researchers who conduct studies involving the corporation's products have information about the progress of those studies. The progress of those studies, whether positive or negative, could have an impact on the market for the corporation's products and the value of the corporation's stock. The use of such nonpublic information in the purchase or sale of the company's stock may constitute insider trading which can carry substantial fines and even prison terms.

You might be thinking to yourself, "I'm not a corporate insider. I do not work for the company. I just conduct research studies." As a researcher, you have a contractual relationship with the company when it sponsors your study. Or you might just have a consulting agreement with a corporation that does not involve any research. Whenever you have a relationship with a company that enables you to have access to nonpublic information, you have access to "insider" information. Once you have insider information, you have the potential for insider trading.

You might also think, "I do not have to worry about insider trading, because I do not own any stock in the company." Insider trading, however, is not limited to individuals who actually own a corporation's stock. You can be guilty of insider trading <u>even if you never buy or sell a single share</u>

of stock. Disclosing insider information to other individuals who use the information in connection with their own transactions in the corporation's stock can violate insider trading laws. Brokers, accountants, lawyers, or other consultants engaged by a corporation can violate insider trading laws by disclosing nonpublic information to others even if the consultant never owns a single share of the corporation's stock. So remember, private information about a company's products or prospects can be insider information, and insider information should not be disclosed to anyone who is not directly involved in the research.

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