

NEW ETHICS POLICY TO PROVIDE FRAMEWORK FOR CONSULTANT BUSINESS MODELS



by Dodge Johnson, Vice President for Ethics and Professional Practices

Last fall the Board created a Business Ethics Task force “to articulate policy relative to business models both old and new with the dual intent of promoting the highest standards of business ethics and assisting members to earn a living.” As a result the Board extended the language of Section V of the current Principles of Good Practice to read as follows. (new language is in italics)

V. Relationships with Other Educational Consultants, *Other Professionals, and Vendors of Client Services.*

A. *Members accept payment only for work performed. They do not receive commissions or other payments for enrollment in or referrals to programs or vendors; nor do they accept remuneration for referring clients to other consultants or other related professionals, unless such relationships involve ongoing coordination, responsibility and oversight for delivery of services. This policy should not be interpreted as interfering with formal, ongoing business relationships a consultant may have with partners, associates, or employees in which a portion of fees paid support company overhead or remuneration agreements.*

B. Ordinarily Members do not pay one another for serving as resources although a Member may make financial arrangements with colleagues on a one-time or ongoing basis to assist with placements outside their competence.

The axiom is stated in the first sentence: *Members accept payment only for work performed.* Everything else is a corollary to show how things might play out in real life.

The following examples are examples only – my best effort to distill how the Task Force saw things. Interpreting policy is the job of individual members for their own practices, and, if questions should arise, of the Ethics Committee.

Example 1: *I refer a client to a psychologist.* I’m not performing work, I’m farming it out. Therefore I do not profit from the referral either directly or indirectly – in other words there’s no commission, finder’s fee or whatever. This is the case even if the psychologist provides me with a report that will be useful in recommending placement, because she did the work, not I. The psychologist bills the client directly for her services.

If, however, I have ongoing involvement – say that together the psychologist and I create and follow up on an educational plan for the client that requires us to meet periodically and review the student’s progress – ideally, she bills the client for her part of the work and I bill the client for mine (although single-billing may be acceptable as well). Such an arrangement insures transparency. It’s like X-rays: the hospital bills you for snapping your picture; the doctor bills you for interpreting it; whom you owe for what is clear.

The same logic applies for referrals to colleagues or to vendors of client services.

Example 2: *In addition to my consulting, I offer college tours.* If these tours are part of my practice – meaning I or my employees make arrangements with the colleges, hire tour leaders, arrange lodging, travel etc., and assume liability for all the things that can happen with a bus load of antsy teenagers – I’m entitled to include overhead and my profit in the price.

But if I subcontract tours by farming them out, the tour company is doing the work and bills the client. I do not profit from the referral either directly or indirectly. By the way, enrolling customers for a subcontractor’s tours doesn’t count as “work” – enrollment is sales, not service.

I also farm out retyping student essays to a stay-at-home mom, but this is really part of overhead and I set fees knowing I’ll have to cover that expense. (I suppose I could itemize, but I don’t like to nickel and dime.)

Example 3: *I own a company.* In addition to my own school counseling services we have consultants who specialize in college and special needs. We have two half-time psychologists and an army of tutors. While all are independent contractors, I am responsible and liable for the quality of their work, I provide them with meeting space, and I can hire or fire them or shift clients from one to another on my own say-so. We send clients who want relocation services to Global Moves, who bills clients for their services

I can’t take a profit, direct or indirect, on relocation as I perform no work, but it’s perfectly acceptable for me to make a profit on everything else. So, in addition to what I earn consulting, the business pays me a salary as chief administrator. I own the building that houses our offices and classrooms, and the business pays rent. A secretary fields inquiries,

handles correspondence, schedules tutors and keeps track of their hours, and assigns space. A part-time bookkeeper handles payroll and billing but we outsource accounting. We bill for all services, and charges reflect not only fees for the services themselves but also overhead and end-of-year profits, which, as owner, I hope will be substantial.

Example 4: *I'm in a partnership, incorporated under Subchapter-S, which specifies both ownership and how profits are handled.* The office is in Tulare, TX; I handle clients in my geographic area, Frozen Sneaker, WY. The office bills for all services, and charges appropriately reflect not only my hourly rate but also partnership office overhead and end-of-year profits, which are distributed under our remuneration agreement.

Example 5: *A college consultant wants to hire my expertise in special needs.* She has been approached by a number of people with kids who have behavioral problems and decided she would like to add special needs to her practice. As a neophyte, she knows she needs help but has been criticized on the Talklist for taking on clients beyond her depth and asking questions any qualified special needs consultant ought to know the answer to.

She has asked me occasional questions and I have been glad to help. But she's finding that there are basics she doesn't know and programs she'll need in her arsenal that she hasn't visited yet. She would like to formalize our relationship so she can feel free to run cases by me routinely, and I can not only make sure she has covered all bases but also share my knowledge and experience as she learns her new craft.

Question: can we put this arrangement on a "professional" basis – i.e. where expertise will gravitate from my head into hers in exchange for money that will gravitate from her pocket into mine?

Answer: Absolutely. This is fine under our policy, section V,B. And it's win-win-win: she gets a practicum; I earn a fee as a consultant's consultant; and when clients hire her, they are assured that even though she is on training wheels, they get the expertise they have a right to expect as a matter of course.