

MEMORANDUM

TO: Providers of Medical Devices and Supplies

FROM: Martin Memorial Health Systems, Inc., and Affiliated Entities

RE: Physician-Owned Intermediaries

DATE: May 6, 2011

Martin Memorial Health Systems and its affiliated entities (“Martin Memorial”) believe that the growing influence of physician-owned intermediaries (sometimes referred to as “physician owned distributors,” “PODs” or “POIs”) in the medical device and supply industry is inconsistent with the spirit and intent of the federal anti-kickback statute, creating what the Office of Inspector General of the Department of Health and Human Services has characterized as a “strong potential for improper inducements between and among physicians investors, the entities, device vendors and device purchasers.” The Office of Inspector General has stated that “these ventures should be closely scrutinized under the fraud and abuse laws.”

Physician-owned intermediaries are beginning to appear in hospital supply chains as “middle man” entities (typically organized as a “product distributor” or a “group purchasing organization”) that gives physician investors an opportunity to receive profits from the sale of certain medical devices or supplies to hospitals in which the physician investors provide professional services. After reviewing various recent publications and legal opinions on this subject, Martin Memorial has concluded that it shall be its policy to refrain from entering into business relationships with supply chains that involve physician-owned intermediaries. Specifically, Martin Memorial’s policy shall be as follows:

1. Martin Memorial prohibits purchasing items or services for use in patient care, including but not limited to pharmaceuticals, implants, instruments and other medical devices, from any supply chain that involves a physician-owned intermediary with which any affiliated physician or immediate family member has a financial relationship or which otherwise involves physician ownership in excess of 5%. Exceptions to this policy may be approved

only by Martin Memorial's Audit Committee, in consultation with the Chief Executive Officer, Chief Legal Officer and Chief Compliance Officer.

2. No Martin Memorial entity will enter into any agreement for the purchase of medical devices, supplies, pharmaceuticals or any other item or service if it determines that the transaction is intended to influence the referral pattern from a physician who has, directly or indirectly, a financial interest in the utilization of the item purchased.
3. Where relationships with physician-owned intermediaries are necessary, the relationship must be consistent with fair market value and satisfy all other applicable legal standards.
4. Vendors of medical devices and supplies shall be contractually required to disclose to Martin Memorial all financial relationships (whether direct or indirect) involving physicians who are either employed by Martin Memorial or who serve on the medical staff of Martin Memorial. Such disclosure shall include non-monetary benefits if the annual value exceeds \$350 annually. In addition, contracts with vendors shall contain an ongoing obligation to disclose such future financial relationships, and shall contain provisions for the prompt termination of the business relationship in the event of a failure to disclose or the disclosure of a prohibited financial relationship. The provisions of this section shall also apply to financial relationships with such physicians' immediate family members. [For the purposes of this policy, the term "immediate family member" shall be defined in the same manner as it is defined in federal regulations related to the anti-kickback statute.]
5. This policy shall be broadly construed such that, whenever possible, business relationships are avoided where supply chains for medical devices and supplies involve a potential conflict of interest of any kind. If Martin Memorial concludes that any vendor has engaged in an effort to circumvent the spirit and intent of this policy, Martin Memorial may, in its sole and absolute discretion, elect to exclude such vendor from doing business with Martin Memorial or take such other corrective action as it deems appropriate under the circumstances.