

## FAIR MARKET VALUE GUIDELINES

*These Guidelines are intended to supplement, and be read in conjunction with, the MedTech Canada Code of Conduct. Capitalized terms used herein are as defined in the MedTech Canada Code of Conduct.*

### 1. HCP ENGAGEMENTS

Many HCPs serve as Consultants to Companies providing valuable *bona fide* Consulting services, including acting as key opinion leaders, participation on advisory boards, speaking or presenting at Company-Conducted Medical Technology Training and Educational Programs and other similar collaboration and consulting opportunities. It is appropriate for MedTech Companies to provide the HCP with Reasonable compensation for performing these Consulting services, provided:

- the HCP is engaged for a *bona fide* unmet business need for information, advice or feedback regarding the Company's products or other topics relevant to the Company's business. The *bona fide* business need must be identified in advance;
- the HCP is selected based on their qualifications and expertise to address the *bona fide* need for Consulting services;
- the HCP engagement is neither an inducement nor reward for the HCP or its HCI purchasing, leasing, using or recommending the Company's Medical Technology or services. The HCP can never be being selected as reward for past purchases or as an inducement for future business;
- the engagement is documented in a written signed agreement, specifying the Consulting services being provided and any expenses or compensation to be paid;
- payment or reimbursement of HCP expenses (such as meals, refreshments, travel and lodging) are permitted, provided the expenses are Reasonable;
- the engagement is fully transparent including the HCP notifying their employer of the engagement and any compensation received;
- the HCP is permitted to accept the compensation within their professional guidelines and under applicable laws; and
- any compensation paid to the HCP must not exceed fair market value as established by appropriate calculation practices.

When engaging HCPs, there is always a risk of perceived influence or potential kickback if the compensation is not properly calculated and administered. Capping HCP Consulting fees to no more than fair market value (FMV) is necessary to ensure there is no real or perceived bribery or kickback embedded in the HCP engagement.

## **2. CALCULATING FAIR MARKET VALUE**

Companies should use a standardized, documented and objective calculation practice to establish the FMV for each HCP Consulting engagements. Many management consulting agencies can offer MedTech Canada Companies FMV calculation services and/or assist MedTech Canada Companies in developing an FMV calculator. In all instances, the FMV calculation should consider:

### **2.1. OBJECTIVE CRITERIA**

Examples of objective criteria that can be considered when assessing the FMV include:

- the services being performed;
- the HCP's tier (see below);
- the HCP's specialty or expertise and the extent to which the specialty or expertise is necessary for the provision of services;
- the location and setting for the services being performed; and
- the standard rate for others providing similar services in the same market.

The criteria considered must always be objective and directly related to the Consulting services being provided. No other criteria (including without limitation the HCP's past or future purchases or position of influence on an HCP's past or future sales) should be considered.

To ensure objectivity, the FMV calculation should be made by a department separate from sales and marketing, such as the Legal or Compliance department.

### **2.2. TIERING of HCPs**

Not all HCPs should be compensated at the same level. Tiering is a valuable tool in helping Companies determine appropriate FMV. A tiering system allows Companies to differentiate between HCPs based on their skills, experience and expertise.

For example, a 3-tier system could classify HCPs as follows:

- Tier I – High: HCP is recognized globally as an expert in their field with highly specialized skills and more than 10 years of experience.
- Tier II – Middle: HCP is a nationally recognized leaders in their field, with demonstrated skills and between 5 and 10 years of experience.
- Tier III – Low: HCP is a locally recognized member of the healthcare industry and has less than 5 years of experience.

To assess which tier an HCP belongs to, the following factors can be considered:

- the HCP's CV or resume and LinkedIn profile;

- the HCP's educational background;
- the HCP's certifications and licenses;
- the HCP's years of practice;
- whether the HCP holds any faculty/academic positions, and if so, at what level (assistant professor, professor, associate professor, tenured professor, etc.);
- whether the HCP has been a speaker or trainer at any educational or scientific conferences in the past 5 years, and if so, on what topics, for which audience (peers, industry associations, etc.) and on what geographic level (regional/national/international);
- the number of peer reviewed publications published by the HCP in the past 5 years;
- whether the HCP a member of any editorial boards or if they peer review publications for respected academic or scientific journals; and
- how much experience does the HCP have in providing Consulting services to Medical Technology Companies.

### **2.3. SERVICES BEING PROVIDED**

The FMV calculation must not only consider the HCP's tier, experience and expertise, but also the nature of the services being provided.

Examples of Consulting services could include:

- participating on advisory boards,
- developing content, i.e., social media postings or articles etc.,
- market research,
- speaker engagements,
- acting as a Key Opinion Leader;
- providing training, and
- ad hoc consulting.

In each case, Companies should consider the exact scope of the services being provided how much preparation and time will be involved (which time should be reasonable and may diminish with experience) and what level of expertise is needed to suitably perform the services.

### **2.4. ADDITIONAL CONSIDERATIONS**

In calculating FMV, Companies may also consider additional factors such as:

- HCP density in local market;
- Geographic location where services will be provided
- applicable laws and regulations;
- business environment and competitive pressures;
- Gross Domestic Product (GDP) and purchasing price parity;
- inflation and frequency/speed of market changes in compensation;
- market challenges; and
- local industry standards.

While it may be difficult for a Company to calculate such factors without engaging a third-party consulting agency, they may be worth bearing in mind in certain circumstances.

### **3. STANDARDIZATION**

It is important that Companies follow a standardized and consistent FMV calculation methodology for all HCPs it engages. Save and except for exceptional circumstances requiring an adjustment to the FMV calculation methodology (in which case the reason for the adjustment must be reasonable, objective, justified and documented and, where possible, vetted and approved by the Legal and/or Compliance department), all HCP engagements should follow the same evaluation process and FMV calculation.

### **4. RECORDKEEPING**

Companies should maintain supporting documentation of their FMV calculation methodology for each HCP engagement. The compensation and any expenses paid or reimbursed for the HCP must also be transparently referenced in a signed HCP engagement contract and disclosed to the HCP's employer. It is recommended that records of FMV calculation methodology be maintained for a period of six (6) years (per Canada Revenue Agency guidelines), or such other length of time as recommended by the Company's document retention policy.