

Ethical practices are the cornerstone of any profession, and *Advancing Philanthropy* endeavors to provide readers with examples and case studies to illustrate best practices for fundraising. However, such examples are not intended to provide legal, accounting or other professional advice. For a copy of the *AFP Code of Ethical Principles and Standards of Professional Practice*, with enforcement procedures, time limits, forms, addresses and phone numbers, visit www.afpnet.org/ethics or ask any chapter president for one.

Professional Obligations

The Big Favor

It is April 5, and you are in your first week as director of development for a hospital when you get a phone call from the hospital's largest donor. The donor, the chairman of a large corporation, has given several million dollars to the hospital and already has a wing named after him. He announces that his tax advisor says he needs to make another donation for the previous year and that he is sending over a check for \$100,000. He asks you to prepare a letter of acknowledgment dated prior to the previous December 31. Before you can think of what to say, he hangs up.

1. What should you do?

Falsifying a written letter of acknowledgment would violate the *AFP Code of Ethical Principles and Standards of Professional Practice*. According to **Standard No. 2** of the *Code*, members shall not engage in activities that conflict with their fiduciary, ethical and legal obligations to their organizations and their clients. They shall make every reasonable effort to assure that their organization is held to the highest ethical standards and conforms to applicable law.

Furthermore, falsifying a letter of acknowledgement would violate **Standard No. 5** of the *AFP Code*, which states that members shall comply with all applicable local, state, provincial and federal civil and criminal laws. Members recognize that compliance with applicable laws is a clear standard and that ignorance of the law is no excuse.



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They must keep up with changes in applicable laws and regulations.

Furthermore, complying with the donor's wishes would violate the U.S. Generally Accepted Accounting Principles (GAAP), the Revenue Reconciliation Act of 1993 and provisions set out in Section 170(f)(8) of the Internal Revenue Code pertaining to contemporaneous written acknowledgments (www.irs.gov). Any charity that knowingly provides false substantiation to a donor may be subject to the penalties for aiding and abetting an understatement of tax liabilities.

Standards No. 5 and No. 15 help ensure that reports that are a part of regulatory requirements for which the member may have some responsibility are completed accurately and in a timely manner. **Standard No. 8**, which requires that members ensure "donors receive informed, accurate and ethical advice about the value and tax implications of potential gifts," would indicate that you might suggest to the donor that he get a second opinion from another accountant or tax advisor regarding the proposed transaction.

Thus, you should call the donor

back and tell him you cannot accept the gift on these terms and explain the reasons why.

2. Suppose you inform your CEO about the offer and the CEO says, “Don’t worry about it, I’ll write the letter.” What should you do?

Is the CEO aware of the provisions of the AFP *Code*? Under Standard No. 2, members are obliged to inform organizational leadership and/or organizational clients of applicable ethical and legal fiduciary practices.

Does the hospital have internal gift acceptance and stewardship policies that address its legal and fiduciary obligations with regard to the request? If not, it should develop such policies. If the CEO persists in insisting that the donor be accommodated, and the CEO is not subject to the jurisdiction of the AFP Ethics Committee, you should consider meeting with the CEO to explain the difficult position you are in. As a member of AFP, you are committed to ethical fundraising and adherence to the law. Explain that the proposed transaction is inconsistent with ethics, best practices and applicable regulations. Unless the CEO is wholly unreasonable, he or she should be very reluctant to pursue a demonstrably improper course of action.

3. Suppose that upon further investigation you learn that occasionally in the past the hospital has done similar “favors” for some of its large donors. What should you do?

Under Standard No. 2 and Standard No. 5, you should be prepared to inform appropriate organizational leadership of any illegal practices in which the organization may be participating. It is unethical to have knowledge of a law or regulation, know one’s organization is not in compliance and choose to ignore possible remedial action.

Who knows about these “favors” and who does not? What has been the board’s role? Have these “favors” involved falsifying Form 990s in the

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past as well? What have the audits shown?

Although the American Competitiveness and Corporate Accountability Act, or Sarbanes-Oxley Act, applies primarily to publicly traded companies, there are elements that pertain to nonprofits as well.

It appears in this case that the hospital does not have policies and procedures requiring an independent and competent audit committee that selects and oversees the auditing company, reviews the audit, requires the full board to approve audit results and provides financial literacy training to all board members. The organization should actively consider these options.

Ideally, the hospital’s CEO and CFO should sign off on all financial statements (either formally or in practice), including Form 990 tax returns, to ensure they are accurate, complete and filed on time. In addition, the board should review and approve financial statements and Form 990 tax returns for completeness and accuracy.

In this case, the hospital has several inaccurate letters of acknowledgment on file. Under Sarbanes-Oxley, the organization should have a written, mandatory document retention and periodic destruction policy. If there should be an official investigation or if one is even suspected, the hospital should stop any document purging in order to avoid possible charges of criminal obstruction.

In addition, there should be a formal “whistle-blower protection” process in place to investigate employee complaints, correct any problems or explain why corrections are not necessary and prevent retaliation. (To learn more about the implications of Sarbanes-Oxley on nonprofit organizations, see the review of *Sarbanes-Oxley for Nonprofits: A Guide to Building a Competitive Advantage* by Peggy M. Jackson, DPA, CPCU, and Toni E. Fogarty, Ph.D., MPH on page 48.)

The AFP Ethics Committee, an 18-member standing committee, is the guardian of AFP’s *Code of Ethical Principles and Standards of Professional Practice*, with substantial contribution from the association’s CEO and the general counsel. To ensure consistency and avoid conflicts, individual chapters play no substantial role in interpretation or enforcement of the *Code*. The Ethics Committee investigates ethics queries and complaints (or initiates proceedings, including complaints, on its own), provides counseling, holds hearings, makes rulings and imposes sanctions. The primary objective of the Ethics Committee is education and correction of prohibited behavior. The committee also is empowered to impose sanctions, including publication of the names of violators. Committee meetings occur twice a year, in winter and late summer. To avoid even the appearance of impropriety, the committee never convenes at board meetings.

For confidential ethics advice about proposed transactions or other matters related to the AFP *Code of Ethics*, call AFP’s CEO at 703-519-8440 or general counsel at 703-519-8455.