

In This Issue

- Confidential Disclosure and Nondisclosure Agreements

Quick Links

[University Hospitals Center For Clinical Research Office of Research Compliance](#)
[UHCMC IRB](#)
[UHCMC Grants and Contracts](#)
[William T Dahms Clinical Research Unit](#)
[Clinical Trial Listing](#)



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Confidential Disclosure and Nondisclosure Agreements

Often, physicians are required to execute a confidential disclosure agreement (CDA) or nondisclosure agreement (NDA) before receiving information from a corporate partner to review the company's proprietary information in advance of participating in clinical trials or research. Such agreements are legally binding contracts that protect the confidentiality of any proprietary data that the sponsor shares with University Hospitals and the physician. Violating these agreements exposes University Hospitals and the physician to potential litigation, as well as diminished reputation. Therefore, it is important to send such agreements to the Center for Clinical Research and Technology's Office of Technology Management for review and execution.

Usually such agreements are straightforward; however, there are some potential pitfalls. For example, the agreement may be overly broad, going beyond the purpose of protecting the sponsor's protocol and other confidential information, extending into other matters such as requiring confidentiality of the trial results or restricting publishing rights. Some agreements may require disclosure of University Hospitals' own confidential information to the sponsor, or may bind the clinician for an excessive period of time. Such provisions could also be inconsistent with University Hospitals' policies and expose all parties to legal risks.

Dr. Wood vs. Sequoia: A Breached Confidentiality Agreement

In one recent case, Dr. Thomas K. Wood was a professor in the Chemical Engineering Department at the University of Connecticut. Dr. Wood executed a confidentiality agreement with Sequoia Sciences, Inc. ("Sequoia"), before performing research on Sequoia's biofilm compounds. During the course of the research, a dispute arose between Sequoia and Dr. Wood with respect to who invented a particular biofilm compound and, thus, who was eligible to patent it. Prior to Sequoia filing a patent application on the compound at issue, Dr. Wood publicly disclosed it at a conference, thereby denying Sequoia the right to seek patent protection in a number of foreign countries and jeopardizing Sequoia's patent rights in the U.S.

The Result:

Sequoia sued Dr. Wood alleging that he breached the confidentiality agreement and misappropriated Sequoia's trade secrets. Dr. Wood claimed that the information was inadvertently disclosed at the conference in a footnote that he overlooked and left unredacted. This case (which has since been settled) highlights the importance of understanding one's obligations under such agreements and that failure to adhere to the terms can lead to serious consequences. Accordingly, it is important to remember that confidential information should not be discussed with outside parties, including friends or colleagues at other hospitals. To prevent confidential information from falling into the wrong hands (or being seen by the wrong eyes), the confidential information should be stored in a secure location and shredded when disposed. In addition, most agreements require that any presentations or publications must be provided to the corporate partner for review prior to publication. For additional information, contact Stephen Behm, Director, Technology Management at (216) 844-1415 or Stephen.Behm@uhhospitals.org, or Bill Fisher, Sr. Research Business Specialist, at (216) 844-5577 or William.Fisher@uhhospitals.org.