

TITLE:	Conflict of Interest		
Manual/Policy #:	Board of Directors # V-A-11	Division:	CPDMH
Original Issue:	January 2020	Issued by:	Board Chair and Board Secretary
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1. **POLICY STATEMENT**

Directors owe a fiduciary duty to the Corporation which includes the requirement to avoid conflicts of interest. The trust and confidence of the community in the integrity of the Board's decision-making processes is maintained by ensuring all members of the Board are free from real, potential or perceived conflicts of interest. It is important that all Directors understand their obligations when a conflict of interest arises.

Directors and non-Board committee members shall avoid situations in which they may be in a position of conflict of interest. Article 4 of the by-laws contains provisions with respect to conflict of interest that must be strictly adhered to. In addition to the by-laws, the process set out in this policy shall be followed when a real, potential or perceived conflict of interest arises.

The principles set out in this policy are to be regarded as illustrative. Directors are expected to comply with both the letter and the spirit of this policy.

2. **SCOPE**

This policy applies to all Directors, including *ex-officio* and Honourary Directors, and to all non-Board members of committees or task forces established by the Board or the by-laws.

3. **GUIDING PRINCIPLES**

N/A

4. **DEFINITIONS**

N/A

5. **PROCEDURE**

Description of Conflict of Interest

A conflict of interest arises in any situation where a Director's duty to act solely in the best interests of the corporation and to adhere to his/her fiduciary duties is compromised or impeded by any other interest, relationship or duty of the Director. A conflict of interest also includes circumstances where the Director's duties to the corporation are in conflict with other duties owed by the Director such that the Director is not able to fully discharge the fiduciary duties owed to the corporation.

The situations in which potential conflict of interest may arise cannot be exhaustively set out. Conflicts generally arise in the following situations:

1. Transacting with the Corporation

When a Director transacts with the corporation directly or indirectly. When a Director has a material direct or indirect interest in a transaction or contract with the corporation.

2. Interest of an Associate

When the corporation conducts business with suppliers of goods or services or any other party of which an associate of a Director is a principal, officer or representative. Associates include a Director's parents, children, siblings, spouse or common law partner and includes any person with a relationship to the Director that would be perceived by a reasonable person to influence the decision-making of that Director.

3. Gifts

When a Director or an associate of a Director or any other person or entity designated by the Director, accepts gifts, payments, services or anything else of more than a token or nominal value from a party with whom the corporation may transact business (including a supplier of goods or services) for the purposes of (or that may be perceived to be for the purposes of) influencing an act or decision of the Board.

4. Acting for an Improper Purpose

When Directors exercise their powers motivated by self-interest or other improper purposes. Directors must act solely in the best interest of the corporation.

5. Appropriation of Corporate Opportunity

When a Director diverts to his or her own use an opportunity or advantage that belongs to the corporation.

6. Duty to Disclose Information of Value to the Corporation

When Directors fail to disclose information that is relevant to a vital aspect of the corporation's affairs.

7. Serving on Other Corporations

A Director may be in a position where there is a conflict of "duty and duty". This may arise where the Director serves as a Director of two corporations that are competing or transacting with one another. It may also arise where a Director has an association or relationship with another entity. For example, if two corporations are both seeking to take advantage of the same opportunity, a Director may be in possession of confidential information received in one boardroom or related to the matter that is of

importance to a decision being made in the other boardroom. The Director cannot discharge the duty to maintain such information in confidence while at the same time discharging the duty to make disclosure. The Director cannot act to advance any interests other than those of the corporation.

8. Where a Physician – Patient Relationship Exists

A Director may be in a conflict of interest position where he/she is a physician and the Board discussion involves their patient or directly relates to a group of patients which reasonably could include his/her patient(s) and where the discussion could place the Director in a compromising position related to their ongoing care of the patient or any legal or ethical issues related to the care of the patient.

Process for Resolution of Conflicts and Addressing Breaches of Duty to Disclose Conflicts

A Director who is in a position of conflict or potential conflict shall disclose such conflict to the Board or committee at the meeting of the Board or committee at which the contract, transaction, matter or decision is first raised. If a declaration is made at a Committee meeting, it must be repeated at the next Board meeting to assure full disclosure to the Board.

The Director may choose to disclose the conflict or potential conflict to the Board and/or Committee Chair in advance of the meeting as a matter of courtesy but in no event will this prevent disclosure at the meeting.

Where (i) a Director is not present at a meeting where a matter in which the Director has a conflict is first discussed and/or voted upon, or (ii) a conflict arises for a Director after a matter has been discussed but not yet voted upon by the Board, or, (iii) a Director becomes conflicted after a matter has been approved, the Director shall make the declaration of the conflict to the chair or vice chair as soon as possible and at the next meeting of the Board.

All such declarations of interest, including the specific nature of the interest, shall be recorded in the minutes of the meeting and in the minutes of every meeting at which the matter that is the subject of the declaration is discussed.

The Board has the authority to determine whether or not a conflict exists. The decision of the Board is final.

Directors will be asked to make an annual general declaration of the Director's relationships and interests in entities or persons that do or may give rise to conflicts.

Abstain from Discussions

The Director may remain present for the purpose of answering questions prior to the discussion and the vote.

The Director shall not be present during the discussion or vote in respect of the matter in which he/she has a conflict and shall not attempt in any way to influence the voting.

In the event that a Director or a Board committee member discloses a conflict or potential conflict of interest (real or perceived) and refrains from, and is not present during the vote, the meeting quorum shall not be affected, provided the number of remaining voting Directors is not less than three.

Should the number fall below three on the matter before the Board of Directors, the President & CEO may apply to the Superior Court of Justice on an ex parte basis for an order authorizing the Board to give consideration to, discuss and vote on the matter out of which the interest arises.

Process for Addressing Breaches of Duty to Declare a Conflict of Interest

1. Circumstances for Referral

Where any Director believes that another Director:

- a) is in a situation of actual or potential conflict of interest; or,
- b) has behaved or is likely to behave in a manner that is not consistent with the highest standards of public trust and integrity and such behaviour may have an adverse impact on the corporation.

2. Process for Resolution

The issue shall be referred to the Chair of the Governance Committee or a member of the Governance Committee if the issue involves the Chair of the Governance Committee, with notice to the President & CEO. The Chair (or Vice Chair as the case may be) will either (i) resolve the matter informally, or (ii) refer the matter to the Governance Committee for resolution.

The Governance Committee will report its findings and recommendations, if any, to the Board. The Board has the authority to determine whether or not a conflict exists. The decision of the Board is final.

If a conflict, or other matter referred cannot be resolved to the satisfaction of the Board (by simple majority resolution) or if a breach of duty has occurred, a Director may be asked to resign or may be subject to removal pursuant to the by-laws and the *Corporations Act*.

Perceived Conflicts

Not all conflicts or potential conflicts may be satisfactorily resolved by strict compliance with the by-laws. There may be cases where the perception of a conflict of interest or breach of duty (even where no conflict exists or breach has occurred) may be harmful to the corporation notwithstanding that there has been compliance with the by-laws. In such circumstances, the process set out in this policy for addressing conflicts and breaches of duty shall be followed.

It is recognized that the perception of conflict or breach of duty may be harmful to the corporation even where no conflict exists or breach has occurred and it may be in the best interests of the corporation that the Director be asked to resign.

6. REFERENCES

Bylaw Number 1: Administrative Bylaws of CPDMH Article 4.

AGH Conflict of Interest Policy V-A-11

7. APPENDICES

N/A

Evaluation: This policy will be reviewed every 2 years.