

**EASTERN MAINE HEALTHCARE SYSTEMS
GOVERNANCE POLICY**

Title: Conflict of Interest

Modifiable

Non-Modifiable

No: 7

Supersedes No: 7

Approved by the Board: 10/05/11

Dated: 03/17/11

Applicable to: EMHS Home Office
 All EMHS Entities
 EMHS Provider Entities

EMHS For-Profit Entities
 EMHS Hospitals
 EMHS Tax-Exempt Entities

Responsible Executive: M. Michelle Hood
President & CEO

Approved by:

Approved by: _____
Signatures on file M. Michelle Hood
President & CEO

_____ P. James Nicholson
EMHS Board Chair

Related Policies:

No. 6, Code of Conduct

No. 9, Director, Trustee and Officers Duty

Policy:

Directors and Officers of EMHS and its tax-exempt affiliates shall complete an annual Conflict of Interest questionnaire and return it to the responsible President and CEO.

Definition:

The term "Officer" as used in this policy means: the President; the Chief Executive Officer and/or Chief Operating Officer if different; any Vice President; Treasurer; Chief Financial Officer if different; the Secretary or Clerk; any individual who has or shares authority to control or determine a substantial portion of the organizations capital expenditure, operating budget, or employee compensation; or any individual who manages a discreet segment or activity of the organization that represents a substantial portion of the organization's activities, assets, income or expenses.

Attachments: Disclosure of Relationships Which May Give Rise to a Conflict of Interest and Questionnaire



Disclosure of Relationships Which May Give Rise to a Conflict of Interest

Eastern Maine Healthcare Systems (the “Corporation”) and its affiliates are subject to federal tax laws as exempt organizations and to Maine corporate laws as non-profit corporations. These laws deal, among other things, with the duties of trustees/directors and officers to their corporations, and they place limitations on the way the Corporation may organize its governance. Disclosure of relationships which may give rise to conflicts of interest is required to assure compliance with the Corporation’s legal, accounting, tax and community obligations.

A. What May Constitute a Conflict of Interest?

Trustees/Directors and officers (including Medical Staff officers) are required by law to exercise their powers and discharge their duties in good faith with a view to the interests of the Corporation and with the care an ordinarily prudent person in a like situation would exercise (13-B MRSA 717 & 720). A conflict of interest arises when the individual has a direct or indirect material financial interest in another entity with which the Corporation transacts business (13-B MRSA 718) or competes, or is him/herself a competitor, customer or vendor of the Corporation. In addition to compensation and/or ownership interests in another entity, financial interest includes being a director, trustee or officer of another such entity (including trustee or beneficiary of a trust). The financial interests of a person’s immediate family members, defined below, are attributed to that person as well (26 CFR 53.4598-3). Status as a competitor always presents the potential for a conflict. Status as a vendor or customer results in a transactional conflict of interest.

Please take time to review the following list of relationships with customers, suppliers and competitors (including medical groups or other health care related businesses) that may give rise to a conflict of interest for you and/or an immediate family member. An immediate family member is defined as a person’s spouse, siblings (by whole or half blood) and their spouses, descendants (children, grandchildren, and great grandchildren) and their spouses, and ancestors (parents and grandparents). The following list is not exhaustive, but illustrates some common examples of situations that could result in a conflict:

- Investment or other financial interest in another entity (including a trust). Exclude publicly traded securities unless you own more than 5% of any class of equity.
- Personal borrowing from or lending to a customer, supplier or competitor. Exclude banking relationships on terms available to other customers.
- Appointment as a director, trustee, or officer of another entity.
- Accepting substantial gifts or entertainment from another entity. Exclude anything with a value less than \$300.00 annually.
- Outside employment by or contracts with another entity.
- Outside interest that could benefit from your position with the Corporation or an affiliate.
- Participation in regulatory, civic, or professional organizations that might involve divulging confidential data.
- Holding public or appointive offices that may require participation in setting policies that would affect the Corporation.
- Hiring, supervising or being hired or supervised by relatives in connection with the Corporation.
- Family or business relationships to Directors/Trustees or executives of the Corporation or an affiliate.

B. Managing Certain Conflicts of Interest: *Trustees/Directors and officers may have private or business interests which* transact business with the Corporation, or which compete with existing or proposed business of the Corporation or an affiliate, and therefore, by definition, present a conflict of interest:

1. When such a person identifies a business transaction or a potential competitive situation between the Corporation and that person (or a member of that person's immediate family) or an entity in which that person (or a member of the person's immediate family) is interested as a director, officer, trustee, beneficiary or owner, that person has a legal duty to disclose the relationship to the Chair of the Corporation's Board of Directors/Trustees if a Director/Trustee, or to the CEO if an officer, and has a legal duty to abstain from voting, negotiating, or other decision making in the transaction on behalf of the Corporation. The person may, after full disclosure of the situation giving rise to the conflict of interest, participate in the discussion, however.
2. The person may be excluded from confidential deliberation as necessary to protect the Corporation's proprietary information. In no event may that person disclose or use the Corporation's proprietary information outside the Corporation. The Corporation respects the duty of the individual to safeguard proprietary information of other entities.
3. If a majority of the Board without a conflict finds that the transaction is fair to the Corporation, it may proceed. All decisions will be reflected in the board's minutes.

C. Prohibited Activities: The following activities conflict with the interests of the Corporation and are prohibited.

- Permitting association of the Corporation's name with an outside business or activity not authorized by the President/CEO.
- Permitting association of the Corporation's name or using any of its facilities or resources in connection with a lobbying effort not authorized by the President/CEO.
- Permitting association of the Corporation's name, or using any of its facilities or resources, in connection with any political campaign in support of or in opposition to a candidate for public office.
- Improvement or maintenance of one's own property or that of other persons using the Corporation's facilities or resources.
- Usurping a corporate opportunity.
- Competing with the Corporation to the Corporation's detriment.
- Disclosing confidential corporate information without authority.

D. Sample Disabling Guidelines: Under the following circumstances, a director/trustee should consider resigning, or may be asked to resign in the best interests of the organization:

- Repeated or significant intentional failure to disclose a conflict of interest.
- Intentional violation of the organization's confidentiality policy or Code of Conduct.
- Engaging in conduct that the board determines may adversely impact the organization.
- Serving to the detriment of the organization as a board member, partner, investor, or senior executive of a direct competitor to the corporation or its affiliates (not to be construed as barring physicians whose practices offer routine services to their patients, such as in-office laboratories).
- Speaking publicly against positions of the board or the best interests of the organization.
- Receiving direct compensation for ongoing services to the organization, as an employee or otherwise, or having an immediate family member who is a senior executive officer for the organization, except as permitted in the Bylaws.
- Serving as an owner, partner, employee, board member, or investor of a vendor (professional services, financial institution, or other business) receiving a substantial amount of revenue from the organization –

which we define as the greater of \$200,000 or 2% of the annual revenues of that vendor in the preceding or current year.

- Suing the organization or an affiliate.

E. IRS Intermediate Sanctions:

Under the IRS intermediate sanctions rules, a “disqualified person” receiving an “excess benefit” from an exempt organization is subject to an excise tax of 200% of the excess benefit and must refund the excess benefit. The State imposes an additional 100% civil penalty (5 MRSA 194-K). An organization manager who participates in an excess benefit transaction is subject to a 25% excise tax. An excess benefit is the amount by which the value of the economic benefit conferred by the organization, directly or indirectly, exceeds the value of the consideration (including performance of services) received in exchange. A disqualified person is any person in a position to exercise “substantial influence” over the organization at any time in the five years prior to the transaction. “Persons exercising a substantial influence” means Directors/Trustees, officers, substantial contributors, and persons who control a substantial portion of the organization’s capital or operating expenditures or employee compensation. Also included in the definition are that person’s immediate family members, as defined in Section A above, as well as entities (including trusts and estates) in which one or more “disqualified persons” own in the aggregate more than a 35% interest.

Example of a Disqualified Person:

Jack is a founding partner of a successful Bangor law firm in which he, together with his son and his son’s wife, own more than 35% of the beneficial interest. Two years ago Jack stepped down from the EMHS Board of Directors. Jack, Jack’s firm, Jack’s son and Jack’s daughter-in-law, as well as any other members of Jack’s immediate family, are all disqualified persons with respect to any transaction with EMHS for the next three years.

Example of an Excess Benefit Transaction:

Jack’s firm (from the example above) does consulting work for EMHS pursuant to contract. The terms of the contract provide for payment to Jack’s firm in an amount which is 20% higher than the firm’s normal hourly rate charged to other clients for similar services. This transaction is likely an excess benefit transaction and would subject Jack’s firm to excise taxes and civil penalties as noted above.

F. Financially Interested Board Members:

No more than 49% of the members of the governing board of a “public benefit corporation” may be “financially interested persons” (13-B MRSA 713-A). A public benefit corporation is a corporation operated for charitable or tax exempt purposes. A financially interested person is one who, or whose spouse, sibling, parent, or child, received compensation for personal services rendered to the Corporation within the previous twelve (12) months as an employee, contractor, consultant, or otherwise, excluding any reasonable payments made to Directors/Trustees for serving as Directors/Trustees. A person, or his/her spouse, sibling, parent or child, is considered to receive compensation if the person, or his/her spouse, sibling, parent, or child, receives or is entitled to receive (other than as a shareholder of a publicly traded corporation) a portion of the net income of a business entity that provides the personal services to the Corporation.

An example of a financially interested person is a private practice physician who provides, or who is an associate in a group practice that provides, medical directorship services compensated by the Corporation where the physician also is an owner of the practice.

G. Independent Directors/Trustees:

Pursuant to the Corporation's Bylaws, a majority of Directors/Trustees must be independent. A Director is deemed independent if he or she meets each of the following criteria for the current and last two fiscal years as of the date of determination: (a) the Director is not nor has been an employee of the Corporation or any of its affiliates, excluding former service as a board chair or interim chief executive officer; (b) neither the Director nor any member of the Director's immediate family has accepted payments from the Corporation or any of its affiliates aggregating in excess of \$25,000, other than compensation to an immediate family member employed by the Corporation or any of its affiliates in a non-executive capacity, compensation for former service as board chair or interim chief executive officer, or benefits received under a tax-qualified retirement plan; (c) neither the Director nor any member of the Director's immediate family is or has been a shareholder, director, member, manager or partner of, or has been employed in a professional capacity by, an external auditor that has performed audit services for the Corporation or any of its affiliates in the last two fiscal years; (d) neither the Director nor any member of the Director's immediate family is or has been employed as an executive officer by any company, the compensation committee of which includes any executive officer of the Corporation or its affiliates; (e) neither the Director nor any member of the Director's immediate family is or has been a partner, member, shareholder or executive officer of a company that made payments to, or received payments from, the Corporation and/or its affiliates in an amount which, in any of the last two fiscal years of the Corporation and/or its affiliates, aggregated more than \$75,000, excluding charitable contributions, employee health benefits, and transactions with publicly held companies in which the Director or an immediate family member of the Director owns not more than 5% of any class of equity; and (f) the Board of Directors affirmatively determines that the Director has no other material relationship with the Corporation or its affiliates that will interfere with the exercise of independent judgment by the Director. For the purposes of this section, the definition of an "immediate family member" is as defined in Section A above.

H. Business Transactions Involving Interested Persons: Pursuant to IRS regulations, the Corporation must report other business transactions with interested persons under certain conditions.

In an effort to help the Corporation manage potential conflicts, maintain its tax exempt status, and avoid excess benefit transactions, please complete the enclosed questionnaire and return it to me as soon as possible. **If you have any changes in your professional or personal relationships after completing the enclosed questionnaire that substantially impact your status with regard to conflicts of interest, please contact me at 973-7045 or at mhood@emh.org.** Should you have any questions regarding conflicts of interest, intermediate sanctions or board membership, please contact me, Glenn Martin, Esq., EMHS Vice President and General Counsel at 973-7014, or Jason Tankel, Esq., Director of Compliance and Internal Audit at 973-5100.

Enclosure: Disclosure Statement Questionnaire

Approved by the Board, 10/05/11

**ATTACHMENT
EMHS (“the Corporation”) DISCLOSURE QUESTIONNAIRE**

If you are a member of more than one EMHS-affiliated board, please identify those boards. You may submit a copy of this completed questionnaire to any other EMHS entity on whose Board you serve.

Yes, I am also a member of the following EMHS-affiliated boards (list below):

No, I am not a member of any other EMHS-affiliated board.

I am not a board member of EMHS or an affiliate.

Please respond to the following questions to the best of your knowledge. If you need extra space, please attach additional sheets of paper and number your responses.

1. I have received and read a copy of the memo from Michelle Hood, EMHS President and CEO, entitled, “Disclosure of Relationships Which May Give Rise to a Conflict of Interest.”

Yes No

2. Financially interested person. *(If you are not a director/trustee, skip to question 4).*

Between September 26, 2010 and today, did you, a family member (spouse, brother, sister, parent or adult child) or business entity (excluding any publicly traded company but including medical practice groups) in whose earnings you or a family member were entitled to share, receive or were entitled to receive compensation for personal services rendered to the Corporation or an affiliate?

Yes No

If yes, list the type of personal services, the dates they were rendered, the name of any business entity through which they were rendered, and the name of the family member, as applicable:

3. ***(If you are not a director/trustee, skip to question 4).*** Between September 26, 2010 and today, have any business transactions not already disclosed in item #2 (including sales, contracts, leases, licenses, service contracts, personal service contracts, joint ventures or other arrangements) been entered into or been effect between the Corporation or an affiliate and you, your family member (as defined in item #8), a business entity in which you or a family member have an ownership interest, or a business entity in which you served at the time of the transaction or currently serve as an officer, director, trustee, key employee or owner?

Yes No

If yes, please explain.

4. Between September 26, 2010 and today, have you held a position as an employee, officer, director or trustee in any other entities, including non-profit organizations or medical groups?

Yes No

If yes, for each such entity list your position and the name of the entity below.

5. Between September 26, 2010 and today, have you or any of your family members (as defined in item #8) had a family or business relationship with a director/trustee, officer, or key employee of the Corporation or an affiliate or with any other entity where a director/trustee, officer or key employee of the Corporation or an affiliate is a director/trustee, officer, key employee or owner?

Yes No

If yes, explain below.

6. Between September 26, 2010 and today, have you or a family member (as defined in item #8) or an organization that employs you or a family member had a financial interest in any organization selected for a grant award or sub-award administered through the Corporation or an affiliate?

Yes No If yes, please explain.

7. Between September 26, 2010 and today, have you or a family member (as defined in item #8) accepted gifts, cash, entertainment or other financial benefits from any person or entity that does business or is seeking to do business with the Corporation or an affiliate, or is a competitor of the Corporation or an affiliate? This disclosure does not apply to reasonable gift items that are tokens of friendship and unrelated to any particular transaction or activity when the value does not exceed \$300 in aggregate in any 12-month period.

Yes No If yes, please list the gift/cash and its source.

8. Disqualified persons. You are receiving this questionnaire because you currently are, or have been within the last five years, a director/trustee, executive, key employee, medical administrator or member of the Medical Executive Committee of the Corporation or an affiliate. The Corporation's or affiliate's ability to transact business with you and/or the person/entities listed below is limited by federal tax law. Questions 8-10 apply to you and your family members as defined by the Internal Revenue Code. Please list the names of your adult family members, if living, who are your:

Spouse

Child/ren (including legally adopted) and Spouses

Parents

Siblings (whole- or half-blood and their Spouses)

Grandparents and their Spouses

Grandchildren and their Spouses

Great Grandchildren and their Spouses

9. Please list any entity in which you and/or a family member as defined under item 8 (independently or in combination) own: (a) more than a 35% beneficial interest (in the case of a trust or estate); (b) more than a 35% voting interest (in the case of a corporation); and/or (c) more than a 35% profit interest (in the case of a partnership). This question applies to the period from September 26, 2010 to today. Check the box if this is not applicable to you and/or your family members.

Not applicable

10. Between September 26, 2010 and today, have you or a family member (as defined in item #8) engaged in any other activity that might give rise to a conflict of interest with the Corporation or an affiliate that has not yet been disclosed?

Yes No If yes, please explain.

Affirmation and Certification

I affirm that I will not permit association of the Corporation's name or use of any of its facilities or resources in connection with a lobbying effort not authorized by the EMHS CEO or designee, or with any political campaign for public office.

I affirm that I will report any situation where I, a family member, or an entity in or for which I or a family member has an ownership interest or serves as a director, trustee, officer or key employee, intend to engage in a business transaction with the Corporation or any affiliate or to initiate a new service, investment or other activity in competition with the Corporation or any affiliate.

I affirm I will as soon as practicable report to the EMHS CEO and amend this disclosure if any change occurs in the above information before the completion of my next annual disclosure.

I certify that the information contained in this disclosure is true and accurate to the best of my knowledge and that I personally completed this disclosure form.

Printed Name

Signature

Date