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Manual:	Governance	Number:	
Section:	Board Effectiveness	Effective Date:	01 SEPT 2011
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Purpose

All Directors have a duty to ensure that the integrity of the decision-making processes of the Board are maintained by ensuring that they and other Directors are free from conflict or potential conflict in their decision-making. It is inherent in a Director's fiduciary duty that conflicts of interests be avoided. It is important that all Directors, officers, and Committee Appointee Members understand their obligations when a conflict or potential conflict arises.

Scope

The policy pertains to the Muskoka Algonquin Healthcare (MAHC) Board of Directors and Committee Appointee Members.

Application

Directors, officers, and Committee Appointee Members shall avoid situations in which they may be in a position of a conflict of interest.

Definitions

"Officers" means officers appointed by the Board including: (a) the Board Chair and Vice Chair; (b) the president, vice-president, the secretary, an assistant secretary, the treasurer, an assistant treasurer, and the general manager of the Corporation; and (c) any other individual who performs functions for the Corporation similar to those normally performed by an individual listed in (a) and (b).

In addition to the conflict of interest provisions in the *Not-for-Profit Corporations Act, 2010* (the **"Act"**) and the by-laws, the process set out in this policy shall be followed when a conflict or potential conflict arises.

Description of Conflict of Interest

A conflict of interest arises in any situation where a Director's duty to act in the best interests of the Corporation and to adhere to their fiduciary duties is compromised by any other interest, relationship, or duty. A conflict of interest also includes circumstances where the Director's duty to the Corporation is in conflict with other duties owed by the Director such that the Director is not able to full discharge the fiduciary duties owed to the Corporation.

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

Transacting with the Corporation

- When a Director transacts with the Corporation directly or indirectly.

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- When a Director has a material direct or indirect interest in a contract or transaction or proposed material contract or transaction with the Corporation.

Interest of a Relative

- When the Corporation conducts business with suppliers of goods or services or any other party of which a relative or member of the Director's household is a principal, officer, or representative.

Gifts

- When a Director or a member of the Director's household 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.

Acting for an Improper Purpose

- When a Director exercises their powers motivated by self-interest or other improper purposes. Directors must act solely in the best interest of the Corporation. Directors who are nominees of a particular group must act in the best interest of the Corporation even if this conflicts with the interests of the nominating party.

Appropriation of Corporate Opportunity

- When a Director diverts to their own use, an opportunity or advantage that belongs to the Corporation.

Duty to Disclose Information

- When a Director fails to disclose information that is relevant to a vital aspect of the Corporation's affairs.

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, must abstain from the discussions, and must avoid influencing the outcome of any decisions.

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Process for Resolutions of Conflicts and Addressing Breaches of Duty

Disclosure of Conflicts

A Director or officer, who is in a position of conflict or potential conflict, shall immediately disclose such conflict to the Board by notification to the Board Chair or Vice Chair. Where the Chair has a conflict, notice shall be given to the Vice Chair. A Committee Appointee Member, who is in a position of conflict or potential conflict, shall immediately disclose such conflict to the Board by notification to the Committee chair. The disclosure shall be sufficient to disclose the nature and extent of the interest. Disclosure shall be made at the earliest possible time and, where possible, prior to any discussion and vote on the matter.

- The disclosure must be made, at a minimum, in the case of a Director:
 - at the meeting where a matter in which the Director has a conflict is first considered;
 - if the Director was not then interested in a matter, at the first meeting after the Director becomes so interested;
 - if the Director becomes interested after a matter has approved, at the first meeting after the Director becomes so interested; or
 - if an individual who has a conflict in a matter later becomes a Director, at the first meeting after the individual becomes a Director.
- The disclosure must be made, at a minimum, in the case of an officer:
 - forthwith after the officer becomes aware that a matter in which the officer has a conflict is to be considered or has been considered by the Board;
 - if the officer becomes interested after a matter has been approved by the Board, forthwith after the officer becomes so interested; or
 - if an individual who has a conflict in a matter later becomes an officer, forthwith after the individual becomes an officer.
- The disclosure must be made, at a minimum, in the case of a Committee Appointee member:
 - at the Committee meeting where a matter in which the Committee Appointee Member has a conflict is first considered;
 - if the Committee Appointee Member was not then interested in a matter, at the first meeting after the Committee Appointee Member becomes so interested;

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- if the Committee Appointee Member becomes interested after a matter has been approved, at the first Committee meeting after the Committee Appointee Member becomes so interested;
- if an individual who has a conflict in a matter later becomes a Committee Appointee Member, at the first meeting after the individual becomes a Committee Appointee Member.
- If a Director or officer has a conflict of interest in a matter that, in the ordinary course of the Corporation's business, would not require approval of the Board or Members, the Director or officer shall disclose the conflict of interest to the Board Chair or Vice Chair, or request to have entered in the minutes of Board meetings, the nature and extent of their interest forthwith after the Director or officer becomes aware of the matter

Continuing Disclosure

A Director, officer, or Committee Appointee Member may provide a general notice to the Board disclosing their relationships and interests in entities or persons that give rise to conflicts.

Leave Meeting and Do Not Vote

A Director, officer, or Committee Appointee Member who has declared a conflict shall not attend any part of a meeting during which the matter in which they have a conflict is discussed, and shall not vote on any resolution to approve the matter.

Exceptions are made if the matter relates to a contract or transaction:

- (a) primarily related to their remuneration as a Director of the Corporation or an affiliate of the Corporation;
- (b) for indemnity or insurance under section 46 of the Act; or
- (c) with an affiliate of the Corporation.

Referral

A Director may be referred to the process outlined below where any Director believes that they or another Director:

- (a) has breached their duties to the Corporation;
- (b) is in a position where there is a potential breach of duty to the Corporation;
- (c) is in a situation of actual or potential conflict of interest; or

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- (d) has behaved or is likely to behave in a manner that is not consistent with the highest standards of trust and integrity and such behavior may have an adverse impact on the Corporation.

Process for Resolution

- (a) The matter will be referred to the Chair or where the issue may involve the Chair, to the Vice Chair, with notice to the President and Chief Executive Officer.
- (b) The Chair (or the Vice Chair, as the case may be) may either:
- (i) attempt to resolve the matter informally; or
 - (ii) refer the matter either to the Performance Management Committee or to a special committee of the Board established by the Chair (or Vice Chair, as the case may be) which shall report to the Board.
- (c) If the Chair or Vice Chair elects to attempt to resolve the matter informally and the matter cannot be resolved to the satisfaction of the Chair (or Vice Chair as the case may be), the Director referring the matter and the Director involved, then the Chair or Vice Chair shall refer the matter to the process in (b) (ii) above.
- (d) A decision of the Board by majority resolution shall be determinative of the matter.

It is recognized that 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 Act and the by-laws.

Perceived Conflicts

It is acknowledged that not all conflicts or potential conflicts may be satisfactorily resolved by strict compliance with the Corporate By-law. 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 Corporate By-law. In such circumstances, the process set out in this policy for addressing conflicts and breaches of duty shall be followed.

Cross Reference

MAHC Corporate By-Law

Relevant Legislation

Not-for-Profit Corporations Act, 2010

Notes

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