

	<input checked="" type="checkbox"/> Policy <input type="checkbox"/> Procedure <input type="checkbox"/> Protocol <input type="checkbox"/> Terms of Reference	Section <i>Policy & Procedure Board Manual</i>	Number 01-112
Conflict of Interest Policy			
Date Issued: 2024-01-25 Date Review/Revised: Next Review Date: March 2025			
Owner: Common Board of Directors (Common Board)	Reviewer(s): Governance and Nominating Committee	Approver: Governance and Nominating Committee	

This is a controlled document prepared solely for use by the Huron Health System (HHS). HHS accepts no responsibility for use of this material by any person or organization not associated with HHS. No part of this document may be reproduced in any form for publication without permission of HHS. A printed copy may not reflect the current electronic document and should always be checked against the electronic version prior to use.

Except as expressly stated to the contrary herein, these Terms of Reference apply to both the Alexandra Marine & General Hospital (AMGH) and the South Huron Hospital (SHH). AMGH and SHH are referred to individually and collectively as the Hospital.

Purpose

All directors have a duty to ensure that the integrity of the decision-making processes of the board of directors 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 interest be avoided. It is important that all directors and officers understand their obligations when a conflict of interest or potential conflict of interest arises.

Application

This policy applies to all directors, including *ex-officio* directors, officers, and non-director Board committee members.

"Officers" means officers appointed by the Board under the *Not-for-Profit Corporations Act, 2010* (the **"Act"**) and the by-laws, including the following Officers.¹

- Board Chair
- 1st Vice Chair
- 2nd Vice Chair
- Treasurer
- Secretary (President & CEO)

¹ ONCA, s. 1 provides that **"officers"** means an officer of the corporation appointed under clause 42(1)(a), including: (a) the chair of the board of directors of the corporation and a vice-chair of the board of directors of the corporation; (b) the President & CEO, a Vice President Clinical Services & CNE, the secretary, an assistant secretary, the treasurer of the corporation; and (c) any other individual who performs functions for the corporation similar to those normally performed by an individual listed in clause (a) or (b).

Policy

Directors, officers, and non-director Board committee members shall avoid situations in which they may be in a position of a conflict of interest or perceived conflict of interest. In addition to the conflict of interest provisions in the Act and the by-laws, which must be strictly adhered to, 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 solely in the best interests of HHS and to adhere to their 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 HHS 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 HHS.

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 HHS

- When a director transacts with HHS directly or indirectly.
- When a director has a material direct or indirect interest in a transaction or contract with HHS.²

Interest of a Relative

When HHS conducts business with suppliers of goods or services or any other party of which a relative or member of the household of a director 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 HHS 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.

² This is broader than conflicts of interest captured by ONCA, which provides under s. 41(1) that a director or officer of a corporation who: (a) is a party to a material contract or transaction or proposed material contract or transaction with the corporation; or (b) is a director or an officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the corporation, shall disclose to the corporation or request to have entered in the minutes of meetings of the directors the nature and extent of his or her interest.

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 HHS. Directors who are nominees of a particular group must act in the best interest of HHS 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 HHS.

Duty to Disclose Information of Value to HHS

When directors fail to disclose information that is relevant to a vital aspect of HHS'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 other than those of HHS.

Process for Resolution 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 HHS Board Chair or Vice Chair. Where the chair has a conflict, notice shall be given to the vice chair. A non-director Board committee member, who is in a position of conflict or potential conflict, shall immediately disclose such conflict to the Common 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.³

- 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;

³ These disclosure obligations are more onerous than the obligations required by s. 41 of ONCA.

- if the director becomes interested after a matter has been 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.⁴
- 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 Common 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.⁵
- The disclosure must be made, at a minimum, in the case of a non-director Board committee member:
 - at the committee meeting where a matter in which the Board committee member has a conflict is first considered;
 - if the Board committee member was not then interested in a matter, at the first committee meeting after the Board committee member becomes so interested;
 - if the Board committee member becomes interested after a matter has been approved, at the first committee meeting after the Board committee member becomes so interested;
 - if an individual who has a conflict in a matter later becomes a Board committee member, at the first committee meeting after the individual becomes a Board committee member.⁶
- If a director or officer has a conflict of interest in a matter that, in the ordinary course of HHS's business, would not require approval of the Common 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 Common Board meetings, the nature and extent of their interest forthwith after the director or officer becomes aware of the matter.⁷

Continuing Disclosure

A director, officer, or non-director Board committee member may provide a general notice to the Common Board disclosing their relationships and interests in entities or persons that give rise to conflicts.⁸

⁴ ONCA, s. 41(2).

⁵ ONCA, s. 41(3).

⁶ ONCA, s. 41(2).

⁷ ONCA, s. 41(4).

⁸ ONCA, s. 41(8).

Leave the Meeting and Do Not Vote

A director, officer, or non-director Board committee 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 unless permitted by board or committee consensus, and shall not vote on any resolution to approve the matter.

Exceptions are made if the matter relates to a contract or transaction for indemnity or insurance under section 46 of the Act.

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 HHS;
- (b) is in a position where there is a potential breach of duty to HHS;
- (c) is in a situation of actual or potential conflict of interest; or
- (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 behaviour may have an adverse impact on HHS.

Process for Resolution

- (a) The matter shall be referred to the chair or where the issue may involve the HHS Board Chair, to the Vice Chair, with notice to the President & CEO.
- (b) The HHS Board Chair (or Vice Chair, as the case may be) may either:
 - (i) attempt to resolve the matter informally; or
 - (ii) refer the matter to either the executive committee or to a special committee of the Common Board established by the chair (or vice chair, as the case may be) which shall report to the Board.
- (c) If the HHS Board 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 Common 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 Act.

Perceived Conflicts

It is acknowledged that 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 HHS 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 a conflict or breach of duty may be harmful to HHS even where no conflict exists or breach has occurred and it may be in the best interests of HHS that the director be asked to resign.

Approval Process	Governance & Nominating Committee:	2024-XX-XX
------------------	------------------------------------	------------