

# SYSTEM POLICY



CATHOLIC HEALTH EAST

POLICY NO.

**103**

PAGE

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<sup>7</sup>  
SUBJECT

**CATHOLIC HEALTH EAST BOARD OF DIRECTORS  
CONFLICT OF INTEREST POLICY**

EFFECTIVE DATE

**September 16, 2008**

ORIGINATION DATE

**March 12, 1998**

DATE REVISED

**September 16, 2008**

APPROVED BY

**Catholic Health East Board of Directors**

RESPONSIBILITY

**Catholic Health East Board of Directors**

## **POLICY**

Consistent with the core value of integrity, Catholic Health East (CHE) seeks to ensure that its business transactions and decisions are free of conflicts of interest and are in the best interest of CHE. Therefore, CHE hereby implements a conflict of interest policy which requires disclosure of any financial interest as defined herein by anyone who serves CHE in a fiduciary capacity. The procedure described herein will be used by the CHE Board of Directors or President and CEO to determine whether an actual conflict exists. In the event of an actual conflict, the Board of Directors will either avoid the conflict or appropriately scrutinize the transaction or arrangement giving rise to the conflict to ensure it is in the best interest of Catholic Health East.

## **PURPOSE**

The purpose of the conflict of interest policy (the "Policy") is to protect Catholic Health East's (CHE) interests when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director, key employee, or other individual who stands in a fiduciary capacity to CHE. CHE, through its Board of Directors, believes it is essential that all individuals serving in a fiduciary capacity to CHE understand the responsibilities the individual has in regards to potential conflicts of interest and understand the procedures utilized by CHE in addressing potential conflicts of interest. This policy provides information to the officers, directors, key employees and others who stand in a fiduciary capacity to CHE regarding requirements for disclosure and the subsequent corporate action required regarding such transactions. It is intended to supplement but not replace applicable Pennsylvania state law governing conflicts of interest applicable to nonprofit and charitable corporations. To the extent that this Policy conflicts with the provisions of applicable Pennsylvania law governing conflicts of interests, the applicable provisions of Pennsylvania law shall govern and control.

## **DEFINITIONS**

### **1. INTERESTED PERSON**

Any director, officer, member of a committee with Board delegated powers, key employee, as defined herein, or other individual who serves CHE in a fiduciary capacity, who has a direct or indirect financial interest, as defined herein, is an interested person. If a person is an

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interested person with respect to CHE or any CHE Constituent Corporation, he or she is an interested person with respect to CHE and all CHE Constituent Corporations.

## 2. KEY EMPLOYEE<sup>1</sup>

Any employee of CHE (other than an officer, director or trustee) who:

- a. had reportable compensation exceeding \$150,000 for the year;
- b. had or shared organization-wide control or influence similar to that of an officer, director, or trustee, or managed or had authority or control over at least 10 percent of the organization's activities; and
- c. were within that group of the organization's top 20 highest paid persons for the year who satisfied both (a) and (b) above.

An individual who is not an employee of CHE is treated as a key employee if he or she serves as a director or similar fiduciary of a disregarded entity<sup>2</sup> of CHE and otherwise meets the standards of a key employee as set for above.

## 3. FINANCIAL INTEREST

A person has a financial interest if the person has, directly or indirectly, through business, investment or family -

- a. A material ownership or investment interest in any entity with which CHE has a transaction or arrangement, or
- b. A compensation arrangement with CHE or with any entity or individual with which CHE has a transaction or arrangement, or
- c. A potential material ownership or investment interest in, or compensation arrangement with, any entity or individual with which CHE is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature. The determination of whether a gift or favor is substantial in nature will be made by the Board through its disinterested directors. For purposes of this policy, a material ownership or investment interest shall not be deemed to include 1) ownership of or

<sup>1</sup> Key employees do not include management companies and similar entities that are independent contractors or any person whose aggregate reportable compensation from CHE and related organizations is less than \$150,000.

<sup>2</sup> A disregarded entity is an entity that is wholly owned by the CHE that is not separate entity for Federal tax purposes.

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the beneficial ownership of mutual fund holdings, blind trusts, or other such similar investments in which the interested person has no direct knowledge or control over the investment; or 2) the record or beneficial ownership by the interested person does not exceed two percent (2%) of the shares of any corporation whose shares are publicly traded on a national securities exchange or in the over-the-counter market.

A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the Board, appropriate Board committee or the CEO, as provided for in this policy, decides that a conflict of interest exists.

## **PROCEDURES**

### **1. DUTY TO DISCLOSE**

- a. A director or Board committee member shall promptly disclose to the Board the existence of any direct or indirect compensation arrangement with the Corporation or other entity within the health care system at the time any such compensation arrangement is made.
- b. A director, Board committee member, officer, or key employee who is an interested person must annually disclose the existence of his or her financial interest, as defined above, or other actual or possible conflict of interest and all material facts annually by completing an Annual Disclosure Statement, as described below.
- c. In connection with any actual or possible conflict of interest, a director, officer, Board committee member, key employee or other fiduciary who is an interested person must disclose the existence of his or her financial interest as defined above, or other actual or possible conflict of interest and all material facts, to the Board and/or members of the committees with Board delegated powers considering the proposed transaction or arrangement as soon as the interested person learns of the proposal creating a reportable financial interest. Non-officer employees, who are not key employees and who stand in a fiduciary capacity to the Corporation shall make such disclosure to the CEO. In connection with the Board's consideration of a transaction or arrangement, the CEO shall disclose to the Board or appropriate committee thereof any employee disclosure made relevant to the matter and the evaluation thereof.

### **2. DETERMINING WHETHER A CONFLICT OF INTEREST EXISTS**

After disclosure of the financial interest or other actual or potential conflict of interest and all material facts and after any discussion with the interested person, the interested person shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.

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### 3. PROCEDURES FOR ADDRESSING THE CONFLICT OF INTEREST

- a. Any interested person may make a presentation at the Board or committee meeting, but after such presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.
- b. In consideration of a proposed transaction in which a conflict of interest has been identified, the Chairperson of the Board or committee may, if deemed appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising any reasonable due diligence required by the circumstances, the Board or committee shall determine whether CHE can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board or committee shall determine in good faith by a majority vote of the disinterested directors whether the transaction or arrangement is in CHE's best interest and for its own benefit and whether the transaction is fair and reasonable to CHE and shall make its decision as to whether to enter into the transaction in conformity with such determination. The interested director or committee member shall not vote regarding the decision of whether to enter into the transaction or arrangement. In reaching its decision, the Board shall also be guided by the principles contained in the Pennsylvania Nonprofit Corporation Law, as amended from time to time (or the corresponding provisions of any successor laws).
- e. Where disclosures are made to the CEO by an employee, the CEO shall make the determination as to the existence of a conflict of interest. Upon making such a determination, the CEO shall proceed in a manner similar to that as set forth in subsections (b) through (d) of this section.

### 4. VIOLATIONS OF THE CONFLICT OF INTEREST POLICY

- a. If the Board has reasonable cause to believe that an interested person has failed to disclose an actual or possible conflict of interest, it shall inform the interested person of the basis for such belief and afford the interested person an opportunity to explain the alleged failure to disclose
- b. If, after hearing the response of the interested person and making such further investigations as may be warranted in the circumstances, the Board determines that the interested person has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

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- c. A process similar to that as set forth in this Section 4 shall be utilized by the CEO for non-officer employees as applicable consistent with other applicable corporate policies and procedures.

### **RECORDS OF PROCEEDINGS**

The minutes or other records of the Board and all committees with Board delegated powers shall contain –

1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed.
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.
3. The CEO shall similarly maintain a record of such disclosures by employees and the evaluation thereof.

### **COMPENSATION COMMITTEES**

A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from CHE for services is precluded from voting on matters pertaining to that member's compensation.

Physicians who receive compensation, directly or indirectly, from CHE, whether as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.

### **ANNUAL STATEMENTS**

Each director, officer, member of a committee with Board delegated powers, key employee and other fiduciary shall annually sign a disclosure statement ("Annual Disclosure Statement") which affirms that such person –

1. has received a copy of the conflict of interest policy,
2. has read and understands the policy,
3. has agreed to comply with the policy, and

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4. understands that CHE is a charitable, tax exempt organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

The President and CEO of CHE shall annually identify any individuals who are deemed Key Employees, as herein defined, or individuals who are otherwise deemed fiduciaries by CHE and ensure those individuals complete and sign an Annual Disclosure Statement.

The Board may also, in its discretion, require other employees or individuals who stand in a fiduciary capacity to the Corporation to sign a similar statement.

The Chairman of the Board shall receive a report from CHE Management on the results of the Annual Disclosure Statements and annually report those results to the full CHE Board of Directors.

### **PERIODIC REVIEWS**

To ensure that CHE operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

1. Whether compensation arrangements and benefits are reasonable (i.e. are the result of arm's-length bargaining).
2. Whether partnership and joint venture and similar arrangements in which CHE participates conform to written policies, are properly recorded, reflect reasonable payments for goods and services, further CHE's charitable purposes and do not result in inurement or impermissible private benefit.
3. Whether agreements to provide health care and agreements between other health care providers, employees, and third party payors and CHE further CHE's charitable purposes and do not result in inurement or impermissible private benefit.

### **USE OF OUTSIDE EXPERTS**

In conducting the periodic reviews provided for above, CHE may, but need not, use outside advisors. If outside experts are used their use shall not relieve the Board of its responsibility for ensuring that periodic reviews are conducted.

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**CATHOLIC HEALTH EAST**

**ANNUAL DISCLOSURE STATEMENT REGARDING  
CONFLICT OF INTEREST POLICY  
AND CONFIDENTIALITY AGREEMENT**

As a \_\_\_\_\_ (Title) of Catholic Health East (“Corporation”), I understand that I owe certain fiduciary duties to the Corporation, including the responsibility to avoid conflicts of interest. I acknowledge that I have received a copy of the Corporation’s Conflict of Interest Policy (“Policy”) dated \_\_\_\_\_, 200\_, have read and understand the Policy, and do hereby agree to comply with the requirements of the Policy.

I understand that the Corporation is a charitable, tax-exempt organization and that in order to maintain its federal tax exemption the Corporation must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

I understand that in connection with any actual or possible conflict of interest, the Policy requires that I disclose the existence of any financial interest or other actual or possible conflict of interest and all material facts regarding the financial interest or other the actual or possible conflict of interest, to the directors and/or committee members with Board delegated powers considering the proposed transaction or arrangement that is subject to such conflict or to the CEO as applicable. Except as fully disclosed below, I represent to the best of my knowledge and belief that as of the date hereof, neither I, nor any member of my family, business associate or firm with which I am affiliated or maintain an investment, has a direct or indirect financial interest in a transaction or arrangement that represents an actual or possible conflict of interest in violation of the Corporation’s Policy.

( ) Reportable circumstances (described below):

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( ) No reportable circumstances

I hereby agree to file an amendment to this disclosure statement if subsequent events cause the information contained herein to be incomplete or inaccurate in any way.

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### CONFIDENTIALITY AGREEMENT<sup>3</sup>

I understand that in the position I hold relative to the Corporation I will gain access to information that is sensitive in nature, confidential and/or proprietary to the Corporation (“Confidential Information”).<sup>4</sup> Confidential Information is crucial to the operation of the Corporation and in some instances the Corporation may have an obligation to protect such information. I recognize that the disclosure of such Confidential Information could adversely affect the Corporation. Therefore, I agree that I will not use, publish or otherwise disclose Confidential Information during or subsequent to the period of time I hold this position, except to the extent such Confidential Information becomes publicly available or is otherwise lawfully obtained from third parties.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Position

*Please return the executed form to the Catholic Health East Office of General Counsel & Vice President, Legal Services.*

<sup>3</sup> This Confidentiality Agreement reinforces the fiduciary duty of confidentiality all Directors owe to the Corporation under common law. It is not intended to place further restrictions on Directors or to expand the scope of their duty of confidentiality.

<sup>4</sup> Confidential information includes information, records and specifications owned or licensed by CHE or used by CHE in connection with the operation of its business including, without limitation, any and all business and product processes, written and unwritten business secrets, plans, strategies, methods, financial data, financial statements, patient data, patient statistics, tax returns, work sheets, records, customer lists, accounts, and procedures and other data relating to methods of operation and any other business information (“CHE Confidential Information”).