



**Policy and Procedure 106  
Conflict of Interest**

**Approved by: Mercy Health Board of Trustees**

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**Policy Statement:**

Mercy Health is a Catholic, nonprofit, tax-exempt corporation. All entities controlled by or under common control with Mercy Health and its Affiliates (collectively, the "Mercy Health System") shall comply with this policy. It is the policy of the Mercy Health System that all Board Trustees, Board Committee Members, Foundation Board Trustees and Board Committee Members, the Captive Insurance LTD., management team (managers and above), employees and agents involved in selection, contracting and/or purchasing, and affiliated physicians (physicians who are employed, contract with the Mercy Health System and its Affiliates, and/or serve on committees) undertake their respective responsibilities on behalf of Mercy Health and its Affiliates in accordance with their fiduciary duties of loyalty and good faith and fair dealing. Such individuals will administer the affairs of Mercy Health and its Affiliates honestly and economically, exercising their best care, skill, and judgment for the benefit of the Mercy Health System. All individuals have a responsibility to identify and make full disclosure of any interests that might result in or have the appearance of a conflict in satisfying their fiduciary duties. It is the policy of the Mercy Health System to avoid entering into transactions that involve potential conflict of interest whenever possible and to enter into transactions that involve potential conflict of interest only after all relevant and pertinent facts regarding the transaction and the potential conflict have been disclosed, considered, and addressed in accordance with this policy. This policy is intended to supplement (not replace) any applicable Federal or State laws addressing conflicts of interest applicable to nonprofit, tax-exempt corporations, and this policy shall be revised from time to time to ensure compliance with such laws.

- A majority of the Mercy Health and Mercy Health Affiliate Boards of Trustees may not, at any time, have a Conflict (as defined herein).
- All members of the Mercy Health Audit and Corporate Responsibility Committee and the Mercy Health Human Resources Committee responsible for executive compensation will be independent of Mercy Health, by being free of any Financial Interests (as defined herein) during their term.
- The Mercy Health Audit and Corporate Responsibility Committee is authorized to grant exceptions, upon showing of good cause, for any member of the Mercy Health or Affiliate Board or Mercy Health or Affiliate Board Committees, except for itself.
- As of January 1, 2006, only the Mercy Health Executive Committee is authorized to grant exceptions at time of appointment or reappointment, upon showing of good cause, for any member of the Mercy Health Audit and Corporate Responsibility Committee.
- The Mercy Health Human Resources Committee responsible for executive compensation will be free of Financial Interests that conflict with their services and as of January 1, 2012, exceptions may not be considered for such Committee members.
- Mercy Health System has implemented a standard online Activities/Relationships Disclosure and Conflict of Interest Certificate (referred to as the "Disclosure Certificate") to support ongoing disclosure, reporting and conflict of interest management. The Disclosure Certificate is to be retained according to the Mercy Health System Record Retention and Destruction policy.
- All members of Mercy Health and Mercy Health Affiliate Boards and Board Committees, Foundation Boards and Board Committees and the Captive must complete an annual Disclosure Certificate to be seated. A Member will not be permitted to participate until the Disclosure Certificate is completed and annually thereafter for each calendar year during his/her course of service.
- All members of management (managers and above); employees and agents involved in selection, contracting and/or purchasing; and affiliated physicians (physicians who are employed, contract with Mercy Health and its Affiliates and/or serve on committees) must complete an annual

Disclosure Certificate and annually thereafter for each calendar year during his/her course of service.

## **Definitions**

1. *Conflicts* - Financial Interests and other potential conflicts of interest shall be referred to collectively as “Conflicts”. An individual may have or develop a conflict of interest that does not necessarily involve a Financial Interest. An individual with any type of Conflict is considered an Interested Person (as defined herein). Whether or not a potential Conflict amounts to an actual Conflict is a decision to be made by the Committee, based on all the facts and circumstances available, and applying a materiality standard from the position of a reasonable person in possession of the relevant facts. Examples of non-Financial Conflicts include (but are not limited to):
  - A. Service on the Board of an organization or entity that does business with, or competes with, a Mercy Health entity.
  - B. A Trustee or member of the senior management team learns of confidential information in the course of his or her service and uses such information or discloses it for his or her own benefit, the benefit of others, or to the disadvantage of the Mercy Health System.
  - C. Gifts or Gratuities, Meals or Favors that are substantial in value (over \$300) or nature offered or received during selection, negotiation or following a business contract, transaction or arrangement.
2. *Committee* - “Committee” shall mean the Board or Board Committee responsible for reviewing Disclosure Certificate summaries and addressing issues under this policy relating to Board Trustees, Board Committee Members, Foundation Board Trustees and Board Committee Members, the Captive Insurance LTD, management team (managers and above), employees and agents involved in selection, contracting and purchasing and affiliated physicians (physicians who are employed, contract with Mercy Health and its Affiliates, and/or serve on committees). It shall mean one of the following:
  - A. For the system-level Mercy Health Board, Board Committees, Foundation Boards and Board Committee Members, the Captive Insurance LTD, management team (managers and above), employees and agents involved in selection, contracting and/or purchasing and affiliated physicians (physicians who are employed, contract with Mercy Health and Mercy Health Affiliates, and/or serve on committees): it shall be the Mercy Health Audit and Corporate Responsibility Committee.
  - B. For the market-level or Affiliate Board, Board Committees, Foundation Boards and Board Committee Members, management team (managers and above), associates and agents involved in contracting and purchasing and affiliated physicians (physicians who are employed, contract with Mercy Health and Mercy Health Affiliates and/or serve on committees): it shall be the market or Affiliate Board with exceptions requiring special approval and management going to the system-level Mercy Health Audit and Corporate Responsibility Committee.
  - C. For potential conflicts involving a Mercy Health Audit and Corporate Responsibility Committee member: that issue shall be reviewed and addressed by the Mercy Health Executive Committee.
3. *Family* - Family means an individual’s spouse, parents, siblings, children, grandchildren, and other persons related to the individual (by blood, marriage, or adoption) and living with him/her.
4. *Fiduciary Duty* – Any Board Trustees and Board Committee Members, the Captive Insurance LTD, management, employees, agents, and affiliated physicians all have fiduciary duties of loyalty and good faith and fair dealing to the Mercy Health System. To uphold their fiduciary duties, individuals must constantly strive to further the charitable mission of the Mercy Health System and act in its best interests; refrain from engaging in any activity that might result in private gain or personal benefit to the detriment or possible detriment of the Mercy Health System; hold all confidential information in confidence, and not commit any act or omission which has the potential to jeopardize the Mercy Health System, its operations, and/or its reputation.
5. *Financial Interest* - A Financial Interest may be direct or indirect through a business, investment, family, or other relationship and includes **active or potential**:

- A. Ownership or an investment interest in any entity involved or proposed to be involved in a contract, transaction, or arrangement with the Mercy Health System; or
- B. Compensation arrangement (through employment, contractual relationship, consulting agreement, or otherwise) with any individual or entity involved or proposed to be involved in a contract, transaction, or arrangement with the Mercy Health System;

Fixed payments under a retirement plan (including deferred compensation) for prior service with the Mercy Health System or any organization receiving any payment from the Mercy Health System are exempt from this definition. An individual's ownership of securities in an entity doing business with or competing with the Mercy Health System **is not** a Financial Interest if: (i) the securities are listed on a recognized stock exchange or traded regularly over the counter; (ii) the ownership is in an amount that is less than \$1,000 or one percent of the value of the outstanding securities, whichever is greater, as of the date of the disclosure; and (iii) the ownership is not a material portion of the individual's portfolio, (*i.e.*, not greater than 25% of the total portfolio's value). An individual's ownership shall include ownership by that individual's Family members and associated business entities.

- 6. *Gifts and Gratuities* - Compensation includes direct or indirect remuneration as well as gifts, entertainment, meals or favors that are substantial in value or nature:
  - in excess of \$300 per item or occasion **or**
  - in excess of \$300 in the aggregate from any one individual or entity in a calendar year

In almost all circumstances, the payment of fair market value for any item or service of value offered by a current or potential business partner eliminates the existence of a gift or gratuity. However, in the extremely unusual situation where an individual is invited to an exclusive event (e.g., Olympics, Super Bowl, NCAA Final Four, the Masters, etc.) the payment of face value may not eliminate the existence of a Gift or Gratuity. The receipt of items or services valued at or above \$100 requires disclosure to the reporting supervisor and Disclosure Certificate, but does not constitute compensation unless it also exceeds the \$300 annual limit. How to report and value such occurrences requires review and concurrence by the appropriate Corporate Responsibility Officer and General Counsel. Where meals are provided by a current or potential business partner at a restaurant, hotel or entertainment event, the following amounts should be used to value such meals, in the absence of actual knowledge of the costs: \$15 for breakfast, \$25 for lunch and \$45 for dinner. Physicians are subject to Federal Stark Laws and Non-Monetary and Incidental Benefit Requirements for gifts, services and gratuities that may be stricter and/or supersede Mercy Health policy provisions. Physicians are required to follow the more strict requirements in reporting and limitations regarding gifts, services and gratuities.

- 7. *Independence* – All Board and Committee members will be considered independent of management and Mercy Health and its Affiliates only if they are free from any Financial Interest.
- 8. *Interested Person* - An Interested Person is any person or entity who has a direct or indirect Financial Interest (now or within the last five years) in a transaction or arrangement and is in a position to exercise substantial influence over the affairs of the Mercy Health System and/or a Mercy Health Affiliate. Individuals who have substantial influence include Board Trustees, Board Committee Members, Foundation Board Trustees and Board Committee members, the Captive Insurance LTD members and management. Individuals who may have substantial influence include associates, agents, and affiliated physicians.
- 9. *Materiality*— Materiality of Conflicts means the degree to which a Financial Interest or other Conflict, because of its size, value, loyalty or duration would lead a reasonable person, in possession of the relevant facts and circumstances, to conclude that a Member could, or could **not**, impartially render decisions on matters with only the best interests of Mercy Health System in mind. Materiality is determined by the relevant Committee based on a review of all the available facts and circumstances. Potential or actual Conflicts of all degrees must be disclosed whenever they arise. As guidance to the Committee, Conflicts may be described by the Committee using the following categories for ease of reference:

A. *Immaterial Conflict* – A Conflict that, based on all the facts and circumstances, is determined by the Committee to **not** interfere with the member’s ability to impartially render decisions on matters with only the best interests of Mercy Health System in mind. An Immaterial Conflict may only require disclosure.

B. *Moderate Conflict* – A Conflict that results from any Financial Interest or such other conflict that is so great that it would cause a breach of the duty of loyalty for the Member with the Conflict to be involved in a discussion related to the Conflict. Under Section 106.4, individuals with a Moderate Conflict must recuse themselves from discussions or approval of affected decisions or transactions regarding the issue.

C. *Material Conflict* - A Conflict of such size, value, loyalty or continuing duration or depth of personal involvement that it reasonably would be seen to prevent the Board or Committee member from rendering decisions on matters impartially and with only the best interests of Mercy Health System in mind. A Material Conflict will result in a determination that the member cannot serve in a Mercy Health System governance capacity.<sup>1</sup>

**Procedure to Identify and Manage Conflicts of Interest:**

- 106.1 Duty to Identify – Governance along with Board members, Committee members, Foundation Board members and Committee members, management and staff ( at the System and market or Affiliate levels) who identify candidates for Boards and Board Committees and the Captive should work to identify all potential Conflicts or Financial Interests as part of the membership development process in order to limit Conflicts or Financial Interests among appointed members and reduce the possibility of surprise recusals. Exceptions to the policy of requiring all members of the Mercy Health Audit and Corporate Responsibility Committee to be free from any Financial Interests may be granted by the Mercy Health Executive Committee for good cause at the time of a member’s appointment or reappointment. Exceptions should include guidance on circumstances warranting recusal from discussion, review and/or vote.
- 106.2 Duty of Loyalty and Avoidance of Conflicts Regarding Business Opportunities and Gifts or Gratuities – Board and Committee members and Interested Persons have a continuing Fiduciary Duty of loyalty to the Mercy Health System that requires them to ensure that any business opportunity they become aware of that would constitute a Conflict and that would likely be of interest to Mercy Health or Mercy Health Affiliate is made available first to Mercy Health, before he/she considers personal participation in the opportunity. Personal participation in business opportunities entered into after Mercy Health or its Affiliate has had an opportunity to participate may create a Conflict that requires disclosure. To avoid the appearance of a Conflict, Board and Committee members and Interested Persons must decline any Gift or Gratuity offered by a current or prospective business partner of Mercy Health System, regardless of value, during any business negotiation or other procurement process involving that business partner. Outside of the procurement or negotiation process with a current or potential business partner, Board and Committee members and Interested Persons must decline any Gift or Gratuity valued at more than \$300 offered by a current or prospective business partner of Mercy Health System in order to preclude the creation of a Financial Interest. The \$300 limit is a limit on any individual Gift and Gratuity, as well as a cumulative limit for smaller Gifts and Gratuities from the same current or potential business partner in the same calendar year. Gifts or Gratuities requiring disclosure are reported on the Mercy Health Disclosure Certificate.
- 106.3 Duty to Disclose - An Interested Person has a continuing obligation to disclose the existence and nature of any actual, apparent, or potential Conflict he or she may have. Disclosure shall be made at the time of appointment or employment pursuant to Mercy Health’s Disclosure Certificate, annually thereafter pursuant to Mercy Health’s Disclosure Certificate, and at any time

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<sup>1</sup> While the national stock exchanges have established direct compensation and indirect compensation thresholds for their listed corporations that amount to an automatic material conflict, the determination of materiality is left to the discretion of the responsible Committee, based on all facts presented to it. The VP of Corporate Responsibility, or counsel, is available to assist Committees in identifying materiality benchmarks adopted by any relevant bodies.

when a contract, transaction, or arrangement in which the Interested Person has a Conflict is being discussed or decided upon including at a Board or Board Committee meeting. If an individual is in doubt as to whether or not a Conflict exists, he or she must disclose it so that an objective determination may be made. To the extent a Board Trustee or Board Committee Member, Foundation Board Trustee or Board Committee Member, Captive Insurance LTD member, a member of management (manager and above), employee, agent, or physician has a potential conflict of interest (financial or otherwise), he or she should disclose it on the Disclosure Certificate and/or to the appropriate Board, Board Committee, or supervisor so that it may be addressed appropriately in accordance with the terms and intent of this policy.

- 106.4 Duty to Recuse - If a contract, transaction, or arrangement with a third party is being considered by a Board or Board Committee, and a member of that Board or Board Committee has a Moderate Conflict with the individual or entity engaging in the contract, transaction, or arrangement under consideration by Mercy Health or any Affiliate, that member must disclose the Moderate Conflict and excuse himself or herself from the discussion of and voting on the contract, transaction, or arrangement. Individuals granted Conflict exceptions must follow the associated approved recusal guidance. Any recusal should be documented within the meeting minutes.
- 106.5 Review of Conflicts – Mercy Health System Governance and Corporate Responsibility staff will coordinate the communication of annual disclosure requirements. The Mercy Health Vice President & Chief Corporate Responsibility Officer will oversee the acquisition and review of Disclosure Certificates for system-level Board and Board Committees, Foundation Board and Foundation Board Committees, the Captive Insurance LTD as well as system-level members of management (managers and above) and employees; agents involved in selection, contracting and/or purchasing; and system-level affiliated physicians (physicians who are employed, contract with the Mercy Health and its Affiliates and/or serve on committees). The Mercy Health Vice President & Chief Corporate Responsibility Officer shall oversee the review of Disclosure Certificates maintained by the Mercy Health System and shall provide a summary of system-level Moderate and Material Conflicts with recommendations for proper conflict management to the Mercy Health Audit and Corporate Responsibility Committee, and to the Mercy Health Board which includes the Board Committee Chairs. A separate summary will be prepared for any Material conflict exceptions identified for a Mercy Health Affiliate that may require special management and will be presented to the Mercy Health Audit and Corporate Responsibility Committee for review and approval. The Vice President & Chief Corporate Responsibility Officer shall also serve as a resource and advisor to the Mercy Health Boards and Board Committee Chairs. The members of the Committee, Boards, and each Board Committee Chair shall review the summary at least annually to ensure that they are aware of their fellow Board or Board Committee members' Conflicts.

The Corporate Responsibility Officer assigned to a Mercy Health Affiliate will oversee the acquisition and review of Disclosure Certificates of the assigned Affiliate Board and Board Committees, Foundation Board and Board Committees, management (managers and above); employees and agents involved in selection, contracting and/or purchasing; and physicians (physicians who are employed, contract with the Mercy Health and its Affiliates and/or serve on committees). The Corporate Responsibility Officer assigned to a Mercy Health Affiliate shall provide a summary of the Moderate and Material Conflicts with recommendations for proper conflict management to the Affiliate Board and Board Committee Chairs. Members of a Mercy Health Affiliate Board and each Board Committee Chair shall review the summary at least annually to ensure that they are aware of their fellow Board or Board Committee members' Conflicts. The Corporate Responsibility Officer and their respective General Counsel will assist the Affiliate Board, committees and committee chairs in recognizing, avoiding and/or managing apparent or possible Conflicts arising among committee members, in accordance with this policy. Any Affiliate exception requests regarding Material conflicts that would require approvals will be forwarded to the Mercy Health Vice President & Chief Corporate Responsibility Officer for presentation and further review by the Mercy Health Audit and Corporate Responsibility Committee. The Corporate Responsibility Officer shall forward a copy of the summary of the Moderate and Material conflicts disclosed to the Affiliate Board and Board Committee chairs, and to the Mercy Health Vice President & Chief Corporate Responsibility Officer for inclusion into the annual Mercy Health System Disclosure Certificate documentation.

Corporate Responsibility Officers will work with General Counsel and system and/or Affiliate management to resolve potential conflicts of interest involving employees, agents and affiliated physicians.

- 106.6 Determination of Conflicts - The Committee shall determine whether or not a potential Conflict is an actual Conflict and the manner in which it should be managed.

If a potential Conflict is disclosed for the first time at a Board or Board Committee meeting, the disinterested members of the Board or Board Committee shall discuss and determine whether it is an actual Conflict (after receiving all pertinent information) without the Interested Person present. If it is unclear, the Board or Board Committee shall either assume the Conflict exists or defer the issue for determination by the Committee and postpone its analysis of the contract, transaction, or arrangement.

- 106.7 Committee Discretion - The Committee may, in its discretion, decide that an Interested Person has no Conflict, an Immaterial Conflict, a Moderate Conflict, or a Material Conflict (consistent with the guidance at Definition 9, above,) and determine how to manage such Conflict appropriately, in the best interests of the Mercy Health System. The Committee shall also engage in such investigation and analysis of the issue as it deems appropriate to determine whether or not an Interested Person has failed to disclose a Conflict or otherwise failed to comply with this policy, and shall take such disciplinary action as it decides is necessary where a violation of this policy is established.

- 106.8 Approval of Arrangements Involving Conflicts. When a Board or Board Committee is asked to consider a contract, transaction or arrangement with an Interested Party, the following steps must be taken to ensure that a decision is made in the best interests of the Mercy Health System and in compliance with pertinent regulations.

106.8.1 The Interested Person shall excuse himself or herself from all discussion of and voting on the contract, transaction, or arrangement with respect to which he or she has the Conflict.

106.8.2 The Board or Board Committee shall take into consideration in its deliberations and decision whether there are any equally or more advantageous alternatives to the transaction or arrangement with an entity or person other than the Interested Person. The deliberations shall address whether the proposed contract, transaction, or arrangement is truly in the best interests of the Mercy Health System and is fair and reasonable.

106.8.3 If the Board or Board Committee elects to approve the contract, transaction, or arrangement, it must ensure that there are appropriate safeguards in place to protect the charitable mission.

106.8.4 Minutes of Board and Board Committee meetings shall include the following:

- A. The names of Interested Persons who disclosed or were otherwise found to have a Conflict with respect to a contract, transaction, or arrangement considered at the meeting, the nature of the Conflict, the actions taken to determine if the Conflict existed, and the Board or Board Committee's determination as to the Conflict; and
- B. The names of all Board or Board Committee members present at the meeting, the context of the discussion (including analysis of alternatives considered and benefits to the Mercy Health System), the fact that the Interested Person left the meeting for purposes of discussion and voting with respect to the contract, transaction, or arrangement if it was determined that a Conflict existed, the votes taken by the disinterested members, and the Board or Board Committee's final determination with respect to the contract, transaction, or arrangement.

- 106.8.5 If Committee review and determination of a potential Conflict involving an Interested Person does not occur prior to Mercy Health System, Mercy Affiliate Board or Board Committee action or Foundation Board or Board Committee action; the contract, transaction, or arrangement approved by the Mercy Health System or Mercy Affiliate Board or Board Committee or Foundation Boards or Board Committees shall be reported to the Mercy Health Vice President & Chief Corporate Responsibility Officer using a standardized form to be disseminated to all locations for ease of critical information gathering, and a summary of the issues and actions taken shall be presented to the Mercy Health Committee for its review and ratification.

**Periodic Reviews:**

To ensure that the Mercy Health System operates in a manner consistent with its charitable purposes, and does not engage in activities that could jeopardize its status as a nonprofit, tax-exempt corporation, Mercy Health shall conduct or cause to be conducted periodic reviews with respect to the following:

1. Whether executive and other associate compensation and benefits are reasonable;
2. Whether transactions and arrangements with physicians are at fair market terms and rates;
3. Whether joint ventures comply with their organizational and governing documents/contracts, are appropriately reported for financial purposes, provide for reasonable payments for goods and services, further the charitable mission, and do not result in inurement or private benefit; and
4. Whether other transactions or arrangements with associates, Health providers, and third parties further the charitable mission and do not result in inurement or private benefit.

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