

POLICY ON ACTUAL AND POTENTIAL CONFLICTS OF INTEREST AND ANNUAL CONFLICT OF INTEREST STATEMENT (SAMPLE CONFLICT OF INTEREST)

Produced by the National Organization for Rare Disorders (NORD®)

PREAMBLE

The [ORGANIZATION NAME] seeks to operate to the highest possible level of public accountability and disclosure. It is therefore appropriate for all members of the Board of Directors and other associated persons to disclose any real or potentially perceivable conflicts of interest.

This policy document is intended to assist members of the Board of Directors, officers, and members of any committee of [ORGANIZATION NAME] with Board-delegated powers to identify and act appropriately in situations that present actual and/or potential conflicts of interest of many types, and to provide [ORGANIZATION NAME] with procedures which, when properly observed and acted upon, will allow such conflicts of interest to be addressed and managed in ways that comply with applicable federal and state laws and [ORGANIZATION NAME]'s status as a highly visible, nationally and internationally active, charitable organization.

All members of the Board of Directors, officers, and members of any Committee of [ORGANIZATION NAME] with Board-delegated powers are required to act in full accordance with this policy and always to declare any possible conflicts of interest, including those that might be perceived by third parties, so that [ORGANIZATION NAME]'s Board of Directors and officers may make appropriate decisions about whether an actual conflict of interest does in fact exist – or could reasonably be thought to exist.

Please note that the existence of conflict of interests as defined in this policy does not necessarily suggest or imply that an individual cannot act as a member of [ORGANIZATION NAME]'s Board of Directors, or as a member of any committee of [ORGANIZATION NAME] with Board-delegated powers. What is of importance is that all such actual or potential conflicts of interest are appropriately acknowledged and managed. However, certain types of conflicts of interest may lead the Board of Directors or the Executive Committee of [ORGANIZATION NAME] to determine that an individual is not eligible to become a member of the Board or should be asked to step down as a member of [ORGANIZATION NAME]'s Board.

ARTICLE I – PURPOSE

1. The purposes of the policies and procedures defined herein are:
 - a. To protect [ORGANIZATION NAME's] interests when it is contemplating entering into a transaction or arrangement that might benefit the private interests of an officer or director of [ORGANIZATION NAME] or might result in a possible excess benefit transaction;
 - b. To assure the integrity of [ORGANIZATION NAME's] position in the public policy environment;
 - c. To assure the transparency of [ORGANIZATION NAME's] processes in all decision-making in accordance with its mission and vision.
2. This policy is intended to supplement, but not replace, state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.
3. This policy is also intended to define and identify “independent” directors.

ARTICLE II – DEFINITIONS

1. Definition of a “conflict of interest.” For purposes of this policy, the following circumstances shall be deemed to create actual or potential conflicts of interest:
 - a. Outside Interests.
 - i. A contract or transaction between [ORGANIZATION NAME] and a responsible person or family member.
 - ii. A contract or transaction between [ORGANIZATION NAME] and any entity in which a responsible person or family member has a material financial interest or of which such person is a director, officer, agent, partner, associate, trustee, personal representative, receiver, guardian, custodian, conservator, or other legal representative.
 - b. Outside Activities.
 - i. A responsible person competing with [ORGANIZATION NAME] in the rendering of services or in any other contract or transaction with a third party
 - ii. A responsible person having a material financial interest in, or serving as a director, officer, agent, partner, associate, trustee, personal representative, receiver, guardian, custodian, conservator, or other legal representative of or consultant to, an entity or individual that competes with [ORGANIZATION NAME] in the provision of services or in any other contract or transaction with a third party.
 - iii. A responsible person or family member having a policy interest that conflicts with public policy positions taken by [ORGANIZATION NAME] in the rare disease, orphan drug, and/or orphan device policy environment.
 - c. Gifts, Gratuities, and Entertainment. A responsible person accepting gifts, entertainment, or other favors from any individual or entity that:
 - i. Does or is seeking to do business with, or is a competitor of [ORGANIZATION NAME];
 - ii. Has received, is receiving, or is seeking to receive a loan or grant, or to secure other financial commitments from [ORGANIZATION NAME];
 - iii. Is a charitable organization with a similar mission to that of [ORGANIZATION NAME], whether in whole or in part;
 - iv. Under circumstances where it might be inferred that such action was intended or possibly would influence the responsible person in the performance of his or her duties.

This does not preclude the acceptance of items of nominal (under US \$25.00 or foreign currency equivalent) or insignificant value which are not related to any particular transaction or activity of [ORGANIZATION NAME].

2. Other Definitions.
 - a. A “responsible person” is any person serving as a member of the Board of Directors of [ORGANIZATION NAME], an officer, or a member of any committee of [ORGANIZATION NAME] with Board-delegated powers.

- b. A “family member” is a spouse, domestic partner, parent, child or spouse or domestic partner of a child, brother, sister, or spouse or domestic partner of a brother or sister, of a responsible person.
- c. A “material financial interest” is a financial interest of any kind in any entity, which, in view of the circumstances, is substantial enough that it would, or reasonably could, affect a responsible person’s or family member’s judgment with respect to transactions to which the entity is a party, specifically including:
 - i. An ownership or investment interest in any entity with which [ORGANIZATION NAME] has a transaction or arrangement;
 - ii. A compensation arrangement with [ORGANIZATION NAME] or with any entity or individual with which [ORGANIZATION NAME] has a transaction or arrangement;
 - iii. A potential ownership or investment interest in/or compensation arrangement with, any entity or individual with which [ORGANIZATION NAME] is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A material financial interest is not necessarily a conflict of interest. A person who has a material financial interest may have a conflict of interest only if the Board of Directors or Executive Committee of [ORGANIZATION NAME] decides that a conflict of interest exists, in accordance with this policy.

- d. A “contract or transaction” is any agreement or relationship involving the sale or purchase of goods, services, rights of any kind, the providing or receipt of a loan or grant, or the establishment of any other type of pecuniary relationship. The making of a gift to [ORGANIZATION NAME] is not a contract or transaction.
- e. A “policy interest” is an interest created by employment by or because of membership of any other organization that takes public policy positions in the rare disease/orphan drug and device policy environment.

A policy interest is not necessarily a conflict of interest. A person with a policy interest may have a conflict only if the Board of Directors or Executive Committee of [ORGANIZATION NAME] decides that a conflict of interest exists, in accordance with this policy.

- f. Any member of the Board of Directors of [ORGANIZATION NAME] shall be considered an “independent director” for the purposes of this policy if he or she is “independent” as defined in the instructions for the IRS 990 form or, until such definition is available, the director:
 - i. Is not, and has not been for a period of at least three years, an employee of [ORGANIZATION NAME] or any entity in which [ORGANIZATION NAME] has a financial interest;
 - ii. Does not directly or indirectly have a significant business relationship with [ORGANIZATION NAME], which might affect independence in decision-making;

- iii. Is not employed as an executive of another corporation where any of [ORGANIZATION NAME's] executive officers or employees serve on that corporation's compensation committee; and
- iv. Does not have an immediate family member who is an executive officer or employee of [ORGANIZATION NAME] or who holds a position that has a significant financial relationship with [ORGANIZATION NAME].

ARTICLE III – PROCEDURES

1. **Duty to Disclose.** In connection with any actual or potential conflict of interest, including personal conflicts of interest and those of family members, any responsible person must disclose the existence of any material financial interest and/or policy interest and be given the opportunity to disclose all material facts to the Board or the Executive Committee.
2. **Disclosure Prior to Action.** Prior to any Board or Board-responsible committee action on a contract or transaction, any responsible person having an actual conflict of interest and who is in attendance at the meeting shall disclose all facts material to the conflict of interest. Such disclosure shall be reflected in the minutes of the meeting.
3. **Recusal of Self.** Any responsible person may recuse him- or herself at any time from involvement in any discussion or decision in which the responsible person believes he or she has or may have a conflict of interest, without going through the process for determining whether a conflict of interest exists. However, any responsible person who plans to not attend a meeting at which he or she has reason to believe that the Board of Directors or any committee with Board-delegated powers will act on a matter in which the responsible person has an actual (as opposed to a possible) conflict of interest shall disclose to the chair of the meeting all facts material to the conflict of interest. The chair shall report the disclosure at the meeting and the disclosure shall be reflected in the minutes of the meeting.
4. **Determination as to Whether a Conflict of Interest Exists.** After disclosure of any potential material financial interest and/or policy interest and all material facts by the responsible person, the remaining Board or Executive Committee members shall determine whether a conflict of interest exists according to the following process and procedures:
 - a. The responsible person may make a presentation at the Board or Executive Committee meeting, but, after this presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction, arrangement, or policy matter involving the possible conflict of interest.
 - b. The Chairperson of the Board or Executive Committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to any proposed financial transaction or arrangement.
 - c. After exercising due diligence, and when relevant, the Board or Executive Committee shall determine whether [ORGANIZATION NAME] can, with reasonable efforts, secure a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

- d. When relevant, if a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or Executive Committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in [ORGANIZATION NAME's] best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.
5. Violations of the Conflicts of Interest policy
 - a. Should the Board or Executive Committee have reasonable cause to believe a responsible person has failed to disclose actual or reasonably foreseeable conflicts of interest, it shall inform the responsible person of the basis for such belief and afford the responsible person an opportunity to explain the alleged failure to disclose.
 - b. If, after hearing the responsible person's response and after making further investigation as warranted by the circumstances, the Board or Executive Committee determines the member has failed to disclose an actual or possible conflict of interest, the Board or Executive Committee shall take appropriate disciplinary and corrective action.

ARTICLE IV – RECORDS OF PROCEEDINGS

1. The minutes of the Board and of all committees with Board-delegated powers shall contain:
 - a. The names of the persons who disclosed or otherwise were found to have a material financial interest and/or policy interest, the nature of the interest, any action taken to determine whether a conflict of interest was present, and the Board's or Executive Committee's decision as to whether a conflict of interest in fact existed.
 - b. The names of the persons who were present for discussions and votes relating to the matter, the content of the discussion, including any alternatives to a proposed financial transaction or arrangement, and a record of any votes taken in connection with the proceedings.

ARTICLE V – COMPENSATION

1. Any responsible person who receives compensation, directly or indirectly, from [ORGANIZATION NAME] for services is precluded from voting on matters pertaining to that member's compensation.
2. Any responsible person serving as a member of any Board-responsible committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from [ORGANIZATION NAME] for services is precluded from voting on matters pertaining to that responsible person's compensation.
3. A responsible person serving as a member of a Board-responsible committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from [ORGANIZATION NAME], either individually or collectively, is not prohibited from providing information to any committee regarding compensation.

ARTICLE VI – ANNUAL STATEMENTS

1. Every responsible person shall annually sign a statement which affirms that such person:
 - a. Has received a copy of the Conflict of Interest policy,
 - b. Has read and understands the Conflict of Interest policy,
 - c. Has agreed to comply with the Conflict of Interest policy, and
 - d. Understands that [ORGANIZATION NAME] is a charitable 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.
2. Every member of the Board of Directors shall annually sign a statement which declares whether such person is an independent director.
3. If at any time during the year the information in the annual statement changes materially, the responsible person shall disclose such changes and revise the annual disclosure form.
4. The Executive Committee shall regularly and consistently monitor and enforce compliance with this policy by reviewing annual statements and by taking such other actions as are necessary for effective oversight.

ARTICLE VII – CONFIDENTIALITY

1. Every responsible person shall exercise appropriate care to not disclose confidential information acquired in connection with such status or information the disclosure of which might be adverse to the interests of [ORGANIZATION NAME]. Furthermore, a responsible person shall not disclose or use information relating to the business of [ORGANIZATION NAME] for the personal profit or advantage of the responsible person or any family member.

ARTICLE VIII – PERIODIC REVIEWS

1. To ensure that [ORGANIZATION NAME] operates in a manner consistent with its charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:
 - a. Whether any and all compensation arrangements and benefits are reasonable, based on competent survey information (if reasonably available), and the result of arm's length bargaining.
 - b. Whether partnerships, joint ventures, and arrangements with management of organizations, if any, conform to [ORGANIZATION NAME's] written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes, and do not result in inurement or impermissible private benefit or in an excess benefit transaction.

ARTICLE IX – USE OF OUTSIDE EXPERTS

When conducting the periodic reviews as provided for in Article VIII, [ORGANIZATION NAME] may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

ANNUAL CONFLICT OF INTEREST STATEMENT TO BE COMPLETED AND SIGNED BY ALL MEMBERS OF THE BOARD OF DIRECTORS AND OFFICERS OF [ORGANIZATION NAME]

1. Name: _____ Date: _____

2. Position:

Are you a voting member of the Board of Directors of [ORGANIZATION NAME]? Yes No

Are you an officer? Yes No

If you are an officer, which officer position do you hold: _____

3. Affirmations:

I hereby affirm the following:

I have received a copy of the [ORGANIZATION NAME] Conflict of Interest policy.

_____ (initial)

I have read and understand the policy.

_____ (initial)

I agree to comply with the policy.

_____ (initial)

I understand that [ORGANIZATION NAME] is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its stated tax-exempt purposes.

_____ (initial)

4. Disclosures:

a. Do you have any material financial interest (current or potential), including any compensation arrangement, as defined in the [ORGANIZATION NAME]

Conflict of Interest policy? Yes No

i. If yes, please describe this material financial interest:

ii. If yes, has the financial interest been disclosed, as provided in the Conflict of Interest policy?

Yes No

b. In the past, have you ever had a material financial interest, including a compensation arrangement, as defined in the [ORGANIZATION NAME] Conflict of Interest policy?

Yes No

i. If yes, please describe this material financial interest, including when (approximately) this material financial interest occurred:

ii. If yes, has the financial interest been disclosed, as provided in [ORGANIZATION NAME's] Conflict of Interest policy? Yes No

c. Are you employed by, or do you belong to an organization, that takes public positions on public policy issues affecting [ORGANIZATION NAME], the rare disease community, or its interests?

i. If yes, please describe this policy interest:

ii. If yes, has this policy interest been disclosed, as provided in [ORGANIZATION NAME's] Conflict of Interest policy? Yes No

5. Are you an independent director, as defined in [ORGANIZATION NAME's] Conflict of Interest policy? Yes No

a. If you are not an independent director, please explain why?

6. Please describe below any other relationships, positions, or circumstances that you believe could constitute possible forms of conflict of interest not otherwise addressed above, If the answer is none, please write the word "none" below.

I hereby certify that the information set forth above is true and complete to the best of my knowledge. I have reviewed, and agree to abide by, the [ORGANIZATION NAME] policy on conflicts of interest in effect as the data of signature of this document.

Signature of responsible person: _____ Date: _____

Date of Review by Executive Committee: _____