Northern Ontario School of Medicine

Northern Ontario School of Medicine Board of Directors

Conflict of Interest Policy

Responsible Office: Secretary of the Board of Directors

In effect: September 19, 2007

A. Introduction

1. Preamble

This conflict of interest policy ("Policy") is intended to ensure the highest business and ethical standards and the protection of the integrity of the board of directors ("Board") of the Northern Ontario School of Medicine ("NOSM").

This Policy guides Directors, with a real, potential or perceived conflict of interest, on how to declare their conflict and the process for dealing with conflict situations.

Directors owe a fiduciary duty to NOSM. Included in that duty is the requirement to avoid conflicts of interest. The term "conflict of interest" refers to a situation where financial, professional or other personal considerations may compromise, or have the appearance of compromising, a Director's judgment in carrying out his or her fiduciary duties as a Director.

All Directors must understand their duties when a conflict of interest arises. The principles set out in this Policy are to be regarded as illustrative. Directors are required to meet both the letter and spirit of this Policy.

2. Examples of Conflict of Interest

Situations where a conflict of interest might arise cannot be set out exhaustively. Conflicts of interest generally arise in the following circumstances:

1. When a Director is directly or indirectly interested in a contract or proposed contract with NOSM. For example: Directors and/or staff are bidding on or doing contract work for NOSM.

2. When a Director acts in self-interest or for a collateral purpose.

3. When a Director diverts to his or her own personal benefit an opportunity in which NOSM has an interest.

4. When a Director has a conflict of "duty and duty". This might arise when:

    - the Director serves as a board member of another corporation that is related to; has contractual relationship with; has the ability to influence NOSM policy; or has any dealings whatsoever with NOSM. For example, service level and other financial agreements between NOSM and the two host Universities; or

    - the NOSM Director is also a director of another corporation, related or otherwise, and possesses confidential information received in one boardroom 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

as a Director of one corporation while at the same time discharging the duty to make disclosure as a Director of the other corporation.

5. When a Director uses for personal gain information received in confidence only for NOSM's purposes.

6. When a Director and his or her family will gain or be affected by the decision of the Board. For example:

    - Faculty members and stipendiary faculty members who are Directors of NOSM, particularly during employment, salary or stipend discussions.

    - Directors whose family members are enrolled as students at NOSM.

    - Students who are Directors of NOSM.

3. Special Considerations for NOSM

NOSM's unique governance structure creates automatic potential conflicts, especially given the university, faculty and student roles on the Board. These structural conflicts need not be a bar to participation in most aspects of the Board's deliberations. In these circumstances the Directors are aware of the potential for conflict of interest and as a practical matter it should not be necessary to make note of the potential conflict in regular Board proceedings. Where the potential for conflict might not be obvious, such as a family relationship to a student, the potential conflict of interest should be declared and recorded in the minutes so that all Directors are aware of the situation. This places an extra burden on Directors to be acutely aware of when their actions and/or other responsibilities might create a conflict and follow the procedures in this Policy to protect themselves and the best interests of NOSM.

Examples:

- When a decision is being made on student fees, the students on the Board should declare a conflict.

- When NOSM and the university/ies are in negotiation, those Directors who are also on the Board of Governors of the university/ies or university employees should declare a conflict.

- When a municipality is in negotiation with NOSM, the Director who is a municipal councillor from the municipality in question should declare a conflict.

B. Conflict of Interest Process

1. Application

All Directors, including *ex-officio* Directors, and all non-Board members of Board committees must follow the conflict of interest process.

2. By-laws

The by-laws contain provisions concerning conflict of interest that must be strictly adhered to in the matters described in the by-laws. The by-laws reflect the requirements of the

Corporations Act (Ontario). The process set out in the by-laws applies to direct and/or indirect interest in a contract or proposed contract. There are, however, other conflict situations beyond those specifically covered in the by-laws and this Policy also addresses those conflicts and sets out the process to be followed when a conflict or potential conflict arises.

3. Conflict of Interest Process

(a) By-laws

All Directors must comply with the conflict of interest requirements of the by-laws. (Section 24)

(b) Conflicts and Potential Conflicts outside the By-laws

Not all conflicts or potential conflicts may be satisfactorily resolved by strict compliance with the by-laws. There might be cases where a conflict or perceived conflict of interest might be harmful to NOSM notwithstanding compliance with the by-laws.

(c) Self-Identified

In these circumstances if the Director has a real, potential or perceived conflict, the Director will disclose the conflict at the earliest opportunity and will describe its nature and extent. If a Director is uncertain whether a conflict exists, the Director will err on the side of disclosure. The Director and the Board will then follow the **Process for Resolution** outlined below.

(d) Potential Conflict Identified by Another Director

If any Director believes that another Director:

i. has breached his or her duties to NOSM;

ii. is in a position where there is potential breach of duty to NOSM;

iii. has an actual or potential conflict of interest; or

iv. has behaved or is likely to behave in a manner that is not consistent with the highest standards of public trust and integrity and such behaviour may have an adverse impact on NOSM;

then the Director will refer the other Director to the **Process for Resolution**.

4. Process for Resolution

The actual, potential or perceived conflict will be referred to the following process for resolution:

a) the Director must declare to the Board or Committee the nature and extent of the interest as soon as possible and not later than the meeting at which the matter is to be considered. If a declaration is made at a Committee meeting, it must be repeated at the next Board meeting to assure disclosure to the full Board.

b) provided that the declared interest is not a financial interest, the Board member may participate in the discussion and may vote on the matter, unless two-thirds of the Board members who have not declared such an interest then decide otherwise.

c) if the declared interest is a financial interest:

(i) the Director may remain present at the meeting for the purpose of answering questions prior to discussion and the vote. If present at the meeting, the Director will be counted in the quorum for the meeting;

(ii) after making the disclosure and answering questions, the Director who has declared a conflict must not vote or in any way attempt to influence the discussion of, or voting on, the decision at issue and must withdraw from the meeting when the matter is being discussed.

d) where the matter of the conflict is unclear, the Director shall refer the matter to the Chair of the Governance Committee or where the issue may involve the Chair of the Governance Committee, to a member of the Governance Committee who is not in conflict, with notice to the Dean/CEO.

e) the Chair of the Governance Committee (or member of the Governance Committee who is not in conflict as the case may be) will either: (1) resolve the matter informally or (2) refer the matter to an a*d hoc* sub-committee of the Board established by the Chair of the Governance Committee, which sub-committee shall report to the Board.

f) if the matter cannot be resolved in accordance with (e) above to the satisfaction of the Chair of the Governance Committee (or member of the Governance Committee who is not in conflict as the case may be), *ad hoc* sub committee and/or the referring Director and the Director involved, the matter will be referred to the full Board for review.

g) if the matter cannot be resolved to the satisfaction of the Board, the Chair of the Governance Committee (or member of the Governance Committee who is not in conflict as the case may be) shall forward it to dispute resolution.

5. Dispute Resolution Mechanism

If the matter cannot be resolved following the **Process for Resolution**, the Board may appoint an acceptable non-Board member to independently review (and call on such resources as necessary to review) the matter in question and make a recommendation to the Board.

6. Minutes

The Board will record every disclosure of a real, potential and perceived conflict of interest and its general nature in the minutes.

7. No Accountability for Profits

If a Director has disclosed a conflict of interest in compliance with this Policy, the Director is not accountable to NOSM for any profits the Director may realize from the decision.

8. Failure to Disclose

If a Director knowingly fails to disclose a conflict of interest as required by this Policy, the Director may be asked to resign or may be subject to removal from office pursuant to the by-laws and the *Corporations Act* (Ontario).

A Director's failure to comply with this Policy does not, in or of itself, invalidate any decision made by the Board.

9. Public Disclosure

NOSM will make this Policy, as amended from time to time by the Board, available to the general public.