



Conflict of Interest Policy

Date of publication: December 2012 **Record Number:** DD12/24486 **File Number:** FF10/046

Version: Final

Summary: Medical Council members are expected to perform their duties in a fair and unbiased way and not make decisions which are affected by self-interest or personal gain.

This Policy states the Council's position in relation to conflict of interest to protect the integrity of decisions and activities, and outlines the appropriate action to take when such situations occur. It is based on the NSW Health Policy Directive *Conflicts of Interest and Gifts and Benefits* (PD2010_010).

Applies to: Council members
Members of Council committees and associated regulatory bodies

Author: Bronwyn Coop, Manager, HPCA Corporate Governance

Related legislation, Awards, Policy and Agreements:

- *Health Practitioner Regulation National Law (NSW) No 86a*
- *Independent Commission Against Corruption Act 1988*
- *NSW Health Conflicts of Interest and Gifts and Benefits Policy Directive (PD2010_010)*
- Medical Council of NSW Code of Conduct for Members

Review date: December 2017
Approved by: Medical Council of NSW
Approval date: 4 December 2012

INTRODUCTION

The Medical Council of NSW (the Council) is committed to providing a fair, ethical and accountable environment for the conduct of its internal operations, and the management of its regulatory and secretariat functions.

Being aware of and managing conflict of interest are essential for good governance and the integrity of decision-making. It is essential that members understand that their role on the Council, its committees and associated regulatory bodies is to represent the interests of the Council and to act in the public interest.

A conflict of interest exists when it is likely that a person could be influenced or perceived to be influenced, by a personal interest when carrying out their public duty. Conflicts of interest that lead to partial decision-making may constitute corrupt conduct.

The *Health Practitioner Regulation National Law (NSW) No 86a* prescribes the disclosure of a pecuniary interest by members of Councils and committees.

KEY DEFINITIONS

Council means the Medical Council of NSW as established under section 41B of the *Health Practitioner Regulation National Law (NSW) No 86a* (the Law).

Member includes any member of the Council, a Council committee or an associated regulatory body such as Professional Standards Committee, Impaired Registrants Panel, Performance Review Panel members or non-judicial members of a Tribunal, section 150 Inquiry delegates, interviewers, panellists, assessors, experts and other ad hoc participants in Council activities.

Staff includes permanent, temporary, casual, contractors or consultants, working in a full-time or part-time capacity, at all levels of the Health Professional Councils Authority (HPCA).

MANDATORY REQUIREMENTS

All members are expected to perform their duties in a fair and unbiased way and not make decisions which are affected by self-interest or personal gain.

WHAT IS A CONFLICT OF INTEREST

The term **conflict of interest** refers to situations where a conflict arises between the public duty and private interests of a public official, which could improperly influence the performance of their official duties and responsibilities. Conflicts of interest can be **actual**, **perceived** or **potential**.

An **actual conflict of interest** involves a direct conflict between a member's current duties and responsibilities and existing private interests. A **perceived** or **apparent conflict of interest** can exist where it could be perceived, or appears, that a member's private interests could improperly influence the performance of their duties – whether or not this is in fact the case. A **potential conflict of interest** arises where a member has private interests that could conflict with other official duties in the future.

A **private** or **personal interest** can be either **pecuniary** or **non-pecuniary**, and includes not only the personal, professional or business interests that a person has, but also the personal, professional or business interests of the individuals with whom one associates.

A **pecuniary interest** involves an actual or potential financial gain or loss. Money does not need to change hands for an interest to be pecuniary. People have a pecuniary interest if they (or a relative, partner, friend or other associate) own property, hold shares, have a position in a company bidding for government work, or receive benefits (such as concessions, discounts, gifts or hospitality) from a particular source. Schedule 5C Clause 16 of the Law prescribes the disclosure of a pecuniary interest by members of the Council and its committees.

A **non-pecuniary interest** is defined as any private interest, which does not have a financial component. It includes any tendency towards favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group. Examples of a non-pecuniary interest might include kinship, friendship, membership of an association, society or trade union or involvement (or interest) in an activity.

Public duty

All members of public bodies have a duty to always put the public interest above their own personal or private interests when carrying out official duties. Determining public interest in a particular situation can be complex, but on a practical level public duty can best be fulfilled by carrying out prescribed official duties fully and effectively; operating within established ethical standards such as the Medical Council of NSW Code of Conduct for Members; and identifying any form of conflict of interest that arises and ensuring that it is managed effectively.

Conflict of duties or competing interests

At times members may have multiple roles: in addition to their role with the Council, they may have a principal job, being employed by another government agency or private sector organisation; or another public sector or community-based role, such as being a member of a committee or statutory body.

In these roles members may have access to confidential information in one role which may be useful or of benefit to their work in the other role. The corruption risk in this situation is that there may be a temptation to use the information improperly, or to give advantage to the second organisation, or create bias or prejudicial treatment of another group or person.

These conflicts are described as **competing interests** or a **conflict of duty** and are not always recognised because no private interest is involved or apparent. These situations should be treated in the same way as potential conflicts of interest, that is, to ensure that decisions are made, and are seen to be made, on proper grounds, for legitimate reasons and without bias.

Further information, definitions and examples of conflicts of interest and their resolution may be found in the Procedures section of NSW Health Policy Directive PD2010_010 and the HPCA *Conflicts of Interest Legal Issues Paper*.

DECLARING AND MANAGING CONFLICTS OF INTEREST

Conflicts of interest must be managed according to the requirements of the Law, NSW Department of Premier and Cabinet guidelines and Council policies and procedures.

Declaration of a pecuniary interest

A pecuniary interest declaration form is provided to members at the time of their appointment. The form seeks information on member's income sources, memberships and affiliations. The Executive Officer will request a review and any amendments to the declaration of pecuniary interest at the beginning of each financial year. However, members should update this information promptly in the case of any change to their declared circumstances.

Disclosure of conflict of interest at a meeting

Schedule 5C clause 16 of the Law prescribes the disclosure of a pecuniary interest, either direct or indirect, by a member at a Council meeting and recording of the interest in a publicly available book.

Conflict of interest disclosures are sought at the beginning of each meeting in the form of a standing agenda item. Disclosures should be recorded in the minutes, along with the action taken. Completion of a Conflict of Interest Declaration Form is recommended for ease of recording and record keeping. The secretariat should ensure the form is available at meetings. This information should be recorded in the Council's Conflict of Interest Register.

If it is considered that there is a conflict, either real or perceived, then the member should either absent him/herself from the meeting while debate occurs or not take part in the discussion and decision. If it is considered that the conflict is immaterial, then the member may participate fully in the debate. It is prudent to err on the side of caution, and it is imperative that the President/Chairperson ensure that conflicts are declared and ruled on.

If a member realises they have failed to make a disclosure, they should do so as soon as possible after the relevant meeting.

Participation in regulatory activities

Prompt declaration of possible conflicts of interest is very important when a member is approached in relation to sitting on a hearing or participating in any other activity of a regulatory body. Such a conflict may arise in relation to Council business, a professional issue or proceedings regarding a practitioner who may be known to them.

Executive and secretariat support to Councils

The Executive Officer and staff need to be mindful of the potential for a conflict of interest when providing executive and secretariat support to the Council. Such a conflict may arise in relation to Council business, a professional issue or proceedings regarding a practitioner who may be known to them. Staff should declare conflicts of interest to the Council as outlined in the relevant HPCA policy and advise their manager of the matter for inclusion in the HPCA Conflict of Interest Register.

TRAINING AND EDUCATION

This Policy and the *Conflict of Interest Legal Issues Paper* are available from the Council's Executive Officer and on the Council's website.

RECORD KEEPING

Member's Pecuniary Interest Declaration and Undertaking (Attachment 1)

The declaration form is provided to members upon their appointment. It is accessible on the Council's website and from the Council's Executive Officer. Completed forms are to be returned to the HPCA Manager, Corporate Governance for retention on the relevant Council file.

Conflict of Interest Declaration Form (Attachment 2)

The declaration form is accessible prior to each meeting on request, is available from the Council's website and is available from the Council's Executive Officer. The form may be used at meetings, or if appropriate, the declaration of a conflict may be noted prior to discussion of the matter and recorded in the minutes of the relevant meeting. Completed declaration forms are included in the meeting papers and/or included on the conflict of interest file and information recorded in the Conflict of Interest Register.

Conflict of Interest Register (Attachment 3)

The Council's Conflict of Interest Register is maintained by the Executive Officer. The Register template is attached to this Policy for reference. The Conflict of Interest Register fulfils the function of the publicly available book as required under the Law.

REFERENCES AND RESOURCES

1. Medical Council of NSW Code of Conduct for Members
2. Medical Council of NSW Gifts and Benefits Policy
3. HPCA Conflict of Interest Legal Issues Paper
4. NSW Health, *Conflicts of Interest and Gifts and Benefits Policy Directive* (PD2010_010)
5. NSW Health, *Code of Conduct* (PD2012_018)
6. NSW Health, *Fraud Control Strategy* (PD2007_070)
7. NSW Health, *Corrupt Conduct – Reporting to the Independent Commission Against Corruption*, PD2011_070
8. NSW Department of Premier and Cabinet, *Conduct Guidelines for Members of NSW Government Boards and Committees*
9. Independent Commission Against Corruption (ICAC) website, www.icac.nsw.gov.au/preventing_corruption
10. NSW Ombudsman website, www.ombo.nsw.gov.au
 - i. Public Sector Agencies fact sheet no.3: Conflict of interests

ATTACHMENTS

1. Member's Pecuniary Interest Declaration and Undertaking
2. Conflict of Interest Declaration Form
3. Conflict of Interest Register template



MEMBER'S PECUNIARY INTEREST DECLARATION AND UNDERTAKING

Name:

Council/Committee/Regulatory body:

I give the following undertaking:

- 1. There is no matter I am aware of concerning my interests*, or any activity in which I am or have been engaged, that may call into question the probity of the Council/committee/regulatory body, or give rise to any conflict with my responsibilities as a member of that body.
2. I am aware that I must exercise my responsibilities as a member of the Council/committee/regulatory body in accordance with the Medical Council of NSW Code of Conduct for Members and the Conduct Guidelines for Members of NSW Government Boards and Committees, including in relation to the confidentiality requirements set out in those Guidelines.
3. I have the following interests* in corporations, partnerships, businesses or other organisations that may be relevant to the activities of the Council/committee/regulatory body:

Sources of income:

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Memberships of Boards and Committees:

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Interests and positions in corporations:

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Interests and positions in trade unions, professional or business associations:

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- 4. I will formally advise the Council/committee/regulatory body of any significant change in circumstances that affects the accuracy of this declaration and undertaking.

Signature

Date

*A member's interests include those of an associate or close relative.



CONFLICT OF INTEREST DECLARATION FORM

This form is to be completed by any member who has a real, perceived or potential conflict of interest in undertaking their duties and obligations related to the roles, responsibilities and functions of the Council, its committees or an associated regulatory body. The form may be completed at a meeting and is available for members to declare a conflict of interest at any time (or the conflict may be recorded in the relevant minutes). Completed forms must be forwarded to the Council President, Chair or Executive Officer at the time of declaration, and are stored on the Council's conflict of interest file. The matter will be recorded in the Council's Conflict of Interest Register.

Name:

Council/Committee/Body:

**Meeting date
(if applicable):**

**Agenda item number
(if applicable):**

Subject:

Nature of interest:

The conflict of interest has been identified as: (Note: Tick all applicable boxes)

ACTUAL POTENTIAL PERCEIVED

PECUNIARY INTEREST * NON-PECUNIARY INTEREST
 (*Update or complete a Member's Pecuniary Interest Declaration and Undertaking Form)

Action taken:

- Council determined that the member's interest does not raise a conflict
- Member absent during deliberation
- Member did not take part in discussion and decision
- Matter dealt with out of session
- Other action. Please describe action taken in "Comments" section below.

Comments:

I hereby declare that the above details are correct to the best of my knowledge and I make this declaration in good faith.

I hereby declare that I have received and appropriately noted this conflict of interest declaration.

Signature (person making declaration)

Signature (President/Chairperson/Executive Officer)

Name:

Date:

Name:

Date:

