

# POLICY & PROCEDURE

## Blythedale Children's Hospital

<b>SUBJECT: CONFLICT OF INTEREST AND RELATED PARTY TRANSACTIONS</b>	
<b>DEPARTMENTS: COMPLIANCE</b>	<b>CODE #: POL-17-004-COM-ORG</b>
<b>EFFECTIVE DATE: November 2017</b>	<b>PAGE 1 OF 9</b>
<b>REVISED DATE: October 2017</b>	<b>APPROVED BY:</b> <b>DATE:</b>
<b>SUPERSEDES: January 2017</b>	<b>TITLE: Chief Compliance Officer</b>

### **POLICY:**

Blythedale Children's Hospital (the "Hospital") requires that its Directors, Officers and Key Persons at all times act in the Hospital's best interests and comply with all applicable legal requirements, including but not limited to, the requirements concerning Related Party Transactions.

### **SCOPE:**

Directors, Officers and Key Persons must, at all times, act fairly, reasonably and in the Hospital's best interests, and must refrain from personal considerations of any kind that conflict with, or that appear to conflict with, the best interests of the Hospital and its patients.

It is expected that all Directors, Officers and Key Persons, including, without limitation, all Senior Management, will read, understand and comply with this Policy. Failure to comply with this Policy may constitute grounds for removal of the individual from his or her position or for other appropriate disciplinary action.

### **DEFINITIONS**

1. An "Affiliate" of the Hospital means any entity controlled by, or in control of, the Hospital.
2. "Board" means the Hospital's Board of Directors.

3. “Director” means any member of the Board of the Hospital, whether designated as director, trustee, or by any other title.
4. “Disclosable Conflict of Interest” means any circumstance that gives rise to, or appears to give rise to, an actual or potential conflict of interest between a Director’s, Officer’s or Key Person’s personal interest (or the personal interests of a Relative of a Director, Officer or Key Person) and the best interests of the Hospital or its patients (including, but not limited to, anything that affects, or has the potential to affect, the safety or quality of care, treatment, and services). In addition, every Related Party Transaction is a Disclosable Conflict of Interest. See the Appendix for examples.
5. “Governing Board” means the body responsible for the management of the Hospital.
6. “Improperly Influence” means coercing, manipulating, misleading, or fraudulently influencing the decision-making when the Director, Officer, or Key Person knew or should have known that their action, if successful, could result in the outcome which they could not deliberate or vote on directly.
7. “Key Person” means any person , other than a Director or Officer, whether or not an employee of the Hospital, who (i) has responsibilities, or exercises powers or influence over the Hospital as a whole similar to the responsibilities, powers, or influence of Directors and Officers; (ii) manages the Hospital, or a segment of the Hospital that represents a substantial portion of the activities, assets, income or expenses of the Hospital; or (iii) alone or with others controls or determines a substantial portion of the Hospital’s capital expenditures or operating budget.
8. “Officer” means those individuals designated as officers in the by-laws of the Hospital and those who are otherwise elected or appointed as officers of the Hospital, in accordance with the Hospital’s by-laws, as determined or approved by the Board.
9. “Related Party” means
  - a. any Director, Officer or Key Person of the Hospital or an Affiliate of the Hospital;
  - b. any Relative of any Director, Officer or Key Person of the Hospital or an affiliate of the Hospital; or
  - c. any entity in which any individual described in clause (a) or (b) of this definition has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%.

10. “Related Party Transaction” means any transaction, agreement or any other arrangement in which a Related Party has a financial interest and in which the Hospital or any Affiliate of the Hospital is a participant, except that a transaction shall not be a Related Party Transaction if: (i) the transaction or the Related Party’s financial interest in the transaction is de minimis, (ii) the transaction would not customarily be reviewed by the Board or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms, or (iii) the transaction constitutes a benefit provided to a Related Party solely as a member of a class or the beneficiaries that the Hospital intends to benefit as part of the accomplishment of its mission which benefit is available to all similarly situated members of the same class on the same terms.
11. “Relative” of an individual means
  - a. his or her spouse or domestic partner, as defined under New York Public Health Law § 2994-a;
  - b. his or her ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren; or
  - c. the spouse or domestic partner of his or her brothers, sisters, children, grandchildren, and great-grandchildren;
12. “Senior Management” includes the President and Chief Executive Officer, Chief Financial Officer, Chief Administrative Officer, Chief Medical Officer, Chief Nursing Officer, Chief Development Officer and Chief Human Resources Officer.

**PROCEDURE:**

1. How and When To Disclose
  - a. Annual Written Conflict of Interest Disclosure Statement: Directors, Officers and Key Persons:

All Directors, Officers and Key Persons will, at least annually, file a written Conflict of Interest Disclosure Statement with the Board Secretary. The Board Secretary will provide copies of all completed Statements to the Chair of the Audit and Compliance Committee.

- b.** For Directors, the Conflict of Interest Disclosure Statement will specifically include, among other Disclosable Conflicts of Interest, a statement identifying, to the best of the Director's knowledge, any entity of which he or she is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the Hospital has a relationship, and any transaction in which the Hospital is a participant and in which the Director might have a

Disclosable Conflict of Interest.

Continuing Obligation to Update Written Conflict of Interest Disclosure Statement:

Directors, Officers and Key Persons: Every Director, Officer and Key Person has an affirmative obligation to update his or her most current written Conflict of Interest Disclosure Statement whenever there are new or changed facts or circumstances that create a Disclosable Conflict of Interest. All such Statements will be filed with the Board Secretary. The Board Secretary will provide copies of all completed Statements to the Chair of the Audit and Compliance Committee.

**c. Prior to the Initial Election of A Director:**

Prior to the initial election of any Director, the individual proposed for a Director position shall complete, sign and submit to the Board Secretary a written Conflict of Interest Disclosure Statement. The Conflict of Interest Disclosure Statement will specifically include, among other Disclosable Conflicts of Interest, a statement identifying, to the best of the proposed Director's knowledge, any entity of which he or she is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the Hospital has a relationship, and any transaction in which the Hospital is a participant and in which the proposed Director might have a Disclosable Conflict of Interest. All such Statements will be filed with the Board Secretary. The Board Secretary will provide copies of each completed Statement to the Chair of the Audit and Compliance Committee.

**d. Disclosure by Medical Staff/Practitioners With Clinical Privileges:**

Each member of the Hospital's medical staff and all practitioners with clinical privileges are required to disclose any Disclosable Conflict of Interest on their applications seeking initial appointment and their applications seeking reappointment to the Hospital's staff or for clinical privileges. In addition, all such staff and practitioners have a continuing obligation to promptly disclose any actual or potential conflict of interest or other Disclosable Conflict of Interest when it is identified. Such matters will be reviewed by the Compliance Officer or her designee and forwarded, as appropriate, to the Chair of the Audit and Compliance Committee.

**e. Disclosure by Hospital Employees:**

Hospital employees must disclose any Disclosable Conflict of Interest that exists on an annual basis. In addition, Hospital employees have a continuing obligation to promptly disclose any actual or potential conflict of interest or other Disclosable Conflict of Interest when it is identified. Required disclosures are to be directed to the Compliance Officer or her designee and forwarded, as appropriate, to the Chair of the Audit and Compliance Committee.

**f. Resolve Doubts in Favor of Disclosure**

In the case of any uncertainty about a particular transaction or matter, it should be disclosed pursuant to this Policy.

**2. The Review Process**

**a. Review by the Audit and Compliance Committee.**

All completed Conflict of Interest Disclosure Statements and all other disclosures of Disclosable Conflicts of Interest (e.g., credentialing applications or employee disclosures) that raise an actual or potential conflict of interest, or that create the appearance of an actual or potential conflict of interest, will be forwarded by the Chair of the Audit and Compliance Committee to the Audit and Compliance Committee for its consideration.

The Audit and Compliance Committee of the Board will conduct a full review of all matters that raise an actual or potential conflict of interest, or that create the appearance of an actual or potential conflict of interest. In so doing, the Audit and Compliance Committee:

- 1) Will consider all relevant facts and circumstances involved in the matter, and in particular, what is fair, reasonable and in the best interests of the Hospital and its patients;
- 2) Will exclude the affected individual(s) from being present at or participating in the deliberations or voting on the matter; provided that Directors who are present at a meeting of the Audit and Compliance Committee of the Board, but not present at the time of a vote due to a conflict of interest, will be considered to be present at the time of the vote for purposes of determining whether a quorum is present;
- 3) Will prohibit the affected individual(s) from any attempt to Improperly Influence the deliberations or voting on the matter;

- 4) Will permit the affected individual(s), upon request of the Audit and Compliance Committee of the Board, to present information concerning the matter at a meeting prior to commencement of deliberations or voting on the matter; and

**b. Additional Special Rules for Related Party Transactions.**

In addition to the general considerations outlined in Section III.2.A above, all Related Party Transactions are subject to the following additional special rules:

- 1) The Hospital may not enter into a Related Party Transaction unless the transaction is determined by the audit and Compliance Committee of the Board to be fair, reasonable and in the Hospital's best interest at the time of determination.
- 2) Any Director, Officer or Key Person who has an interest in the Related Party Transaction shall disclose in good faith to the Audit and Compliance Committee of the Board all material facts concerning such interest; and
- 3) No Related Party may participate in the deliberations or voting relating to any Related Party Transaction. However, the Audit and Compliance Committee of the Board may request that a Related Party present information concerning a Related Party Transaction at a meeting prior to the commencement of deliberations or voting relating thereto. Directors who are present at a meeting of the Audit and Compliance Committee of the Board, but not present at the time of a vote due to a Related Party Transaction, will be considered to be present at the time of the vote for purposes of determining whether a quorum is present.

4. With respect to any Related Party Transaction involving the Hospital and in which a Related Party has a substantial financial interest, the following shall also apply:

- 1) Prior to entering into the transaction, the Audit and Compliance Committee of the Board shall consider alternative transactions to the extent available;
- 2) The transaction must be approved by not less than a majority vote of the Audit and Compliance Committee of the Board members present at the meeting; and
- 3) The Audit and Compliance Committee of the Board will contemporaneously document in written minutes the basis for its approval or disapproval, including its consideration of any alternative transactions.

**c. Determination by the Audit and Compliance Committee.**

The Audit and Compliance Committee of the Board will make a final and binding determination as to whether a conflict of interest exists or may exist, and what course the Hospital will take in connection with the matter.

The Audit and Compliance Committee of the Board will contemporaneously document in writing in appropriate minutes of any meeting at which the matter is deliberated or voted upon all deliberations and determinations relating thereto, including, at a minimum, a summary of the matter, a summary of the deliberations, consideration of any alternatives, who is present at the meeting(s), the vote and the basis for the determination, including, but not necessarily limited to, whether the matter is as fair and reasonable to the Hospital as would otherwise then be obtainable by the Hospital.

**a. Certain Compensation Decisions.**

The fixing of salaries of Officers, if not done pursuant to the by-laws, requires the affirmative vote of a majority of the entire Board unless a higher proportion is set by the certificate of incorporation or by-laws. All compensation must be in a reasonable amount for services rendered and must be in compliance with all other legal requirements. No person who may benefit from such compensation may be present at or otherwise participate in any deliberation or vote concerning his or her compensation. However, such person may be asked to present information as background or answer questions at a meeting prior to the commencement of deliberations or voting relating thereto.

**b. Requests from Patients or Those Who Work In The Hospital.**

All requests for policies, procedures and information about the relationship between care, treatment, and services and financial incentives are available upon request to all patients and those individuals who work in the Hospital, including staff and licensed independent practitioners.

## **TRAINING**

The Hospital will conduct training and education for all Directors, Officers and Key Persons on this Policy, including as to what constitutes a Disclosable Conflicts of Interest, required disclosures, when and how disclosures are to be made, the review and determination process and other related matters at the individual's orientation and on a regular basis thereafter.

## **LOANS TO DIRECTORS OR OFFICERS**

No loan may be made by the Hospital to a Director or Officer, or to any other corporation, firm, association or other entity in which one or more of the Hospital's Directors or Officers are directors or officers or hold a substantial financial interest, except a loan by one charitable corporation to another charitable corporation.

## **VIOLATIONS OF THE POLICY**

If the Audit and Compliance Committee of the Board has reasonable cause to believe that a Director, Officer or Key Person has failed to comply with this Policy, the Audit and Compliance Committee may make such further investigation as may be warranted in the circumstances. If the Audit and Compliance Committee determines that any such person has in fact failed to comply with this Policy, the Audit and Compliance Committee shall recommend to the Board that it take appropriate disciplinary and corrective action.

## **CONFIDENTIALITY**

All information disclosed to the Hospital under this Policy will be held in confidence by the Hospital, unless required by law or regulations, or if the best interests of the Hospital dictate otherwise, as determined by the Board or authorized committee of the Board.

## **REFERENCES:**

New York Office of the Medicaid Inspector General  
Office of Inspector General, U.S. Department of Health and Human

## **RESPONSIBILITY:**

The adoption, implementation of and compliance with this Policy shall be overseen by the Board and the Audit and Compliance Committee of the Board. The Audit and Compliance Committee of the Board may, in its discretion, authorize certain functions relating to the implementation of, and compliance with, this Policy to be performed by the Hospital's Compliance Officer or another Hospital employee, but the Audit and Compliance Committee of the Board will, at all times, retain overall responsibility for all aspects of the oversight of this Policy.

## **APPENDIX:**

### **EXAMPLES**

It is not possible to list every circumstance that gives rise to either a conflict of interest or the appearance of a conflict of interest. However, the following examples may be helpful in illustrating the types of situations that may create an actual or potential conflict of interest or the appearance of one. Remember that this is not an exhaustive list, and your particular circumstance may very well give rise to a conflict of interest, or the appearance of one, even though it is not listed below.

A Disclosable Conflict of Interest exists, for example, when a Director, Officer or Key Person:

- i. Engages in, or intends to engage in, a Related Party Transaction;
- ii. Has any financial interest in a vendor, competitor or entity with which the Hospital does business or intends to do business; is a member, owner, sole proprietor, partner, shareholder, director, trustee or officer of a vendor, competitor or entity with which the Hospital does business or intends to do business; or has a contractual or employment relationship with a vendor, competitor or entity with which the Hospital does business or intends to do business;
- iii. Accepts gifts, entertainment or other favors from a vendor, competitor or entity with which the Hospital does business or intends to do business;
- iv. Represents the Hospital in any matter in which the person has a personal interest (financial or otherwise);
- v. Uses, or has the opportunity to use, knowledge about the Hospital for personal gain, profit or advantage;
- vi. When a current Director, Officer or Key Person has any family or business relationship with another current Director, Officer or Key Person. A business relationship between two persons includes where: (i) one person is employed by the other in a sole proprietorship or by an organization with which the other is associated as a trustee, director, officer, or greater-than-35% owner, even if that organization is tax-exempt; (ii) one person is transacting business with the other (other than in the ordinary course of either party's business on the same terms as are generally offered to the public), directly or indirectly,<sup>1</sup> in one or more contracts of sale, lease, license, loan, performance of services, or other transaction involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the Hospital's tax year; and (iii) the two persons are

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<sup>1</sup> For purposes of this definition, "indirect transactions" are transactions with an organization with which the one person is associated as a trustee, director, officer, or greater-than-35% owner. Such transactions do not include charitable contributions to tax-exempt organizations.

- each a director, trustee, officer, or greater than 10% owner in the same business or investment entity (but not in the same tax-exempt organization);
- vii. Might have, or appears to have, a conflicting interest in any transaction or arrangement in which the Hospital is, or intends to be, a participant;
  - viii. Engages in any conduct that interferes with, or appears to interfere with, the best interests of the Hospital, the safety, quality of care, treatment and services provided to the Hospital's patients, or the person's responsibilities to the Hospital;
  - ix. Receives or is offered such things as gifts, entertainment or personal services compensation arrangements from or by a pharmaceutical manufacturer that are intended to, or appear to, improperly influence and undermine the clinical integrity of the Hospital's formulary selection process or the best interests of the Hospital and its patients (including the Hospital's safety or quality of care, treatment, and services);
  - x. Has a financial or other Disclosable Conflict of Interest, either directly or indirectly through a Relative, in an organization that provides grants to conduct research or other projects in association with the Hospital;
  - xi. Receives hospitality, loans, gratuities or other financial benefits from any patient, patient family member or visitor that affects, or has the potential to affect, the safety or quality of care, treatment and services;
  - xii. Has a familial, financial or business relationship that does or has the potential to affect the safety or quality of patient care, treatment and services. For example:
    - 1. A medical staff member who receives financial remuneration for each patient that he or she enrolls in a study funded by a major drug company;
    - 2. An employee whose spouse owns a durable medical equipment company that does business with the Hospital or its patients;
    - 3. A physician on the medical staff who also is the medical director of, or has an ownership or financial interest in, a nursing home where Hospital patients are referred;
    - 4. An employee with purchasing authority who makes a decision to buy goods or services based on personal relationships or personal gain, and not in the best interests of the Hospital and its patients.
  - xiii. When a Director who is an officer or director of, or has a direct or indirect substantial financial interest in, another corporation, firm, association or other entity with which the Hospital does business or intends to do business.

Other examples may arise, particularly given the many contexts within which the Hospital conducts its day-to-day operations.