



Introduction

These policies and guidelines (which are referred to as guidelines) are intended to provide guidance to the members, Directors, officers and senior employees of the Ontario Chiropractic Association (the “**Association**”) with respect to situations, relationships and arrangements that might give rise to or appear to give rise to conflicts of interest that are not in the best interests of the Association or its members. The guidelines apply to officers and senior employees as well as to Directors, as the context permits or requires.

In carrying out his or her responsibilities as a director of the Association (a “**Director**”), each member of the board of directors of the Association (the “**Board**”) has at common law a fiduciary duty, involving confidence and trust, to act in the best interests of the Association. The scope and nature of this fiduciary duty has evolved at common law over time. These guidelines proceed on the basis that certain standards should be applied to the Association and its Directors, officers and staff. The guidelines are aimed at identifying and addressing situations in which there may be actual or perceived conflicts of interest.

Guidelines

These guidelines are intended to provide a means by which the conduct of Directors, officers and senior employees of the Association can be assessed and judged, to ensure that it is in the best interests of the Association at all times.

1. Definitions

In these guidelines, certain terms are defined. These include the following:

“**Conflict of interest**” includes, without limitation, the following situations that may give rise to a conflict of interest or an appearance of a conflict of interest on the part of a Director, officer or employee of the Association, namely:

(a) Pecuniary or Financial Interest

A person will be considered to have a pecuniary or financial interest in a decision when the person (and/or any “associate” of the person) stands to gain by that decision, either in the form of money, gifts, favours, gratuities or other special consideration, whether directly or indirectly. For this purpose, a person will be considered to stand to gain by avoiding a detriment;

(b) Undue Influence



A Director's participation or influence in a decision of the Board will involve undue influence if it selectively and disproportionately benefits particular agencies, companies, organizations, municipal or professional groups or patients, or any particular demographic, geographic, political, socio-economic or cultural group in a manner that is inconsistent with the overall objectives of the Association, since to do so would constitute a violation of the responsibility of the Director to the Association and to the community it serves at large. For greater certainty, participating in or influencing a decision will not be undue influence merely because a Director represents a constituency determined by gender, age, geography or other factors if the Director does not benefit personally in a manner that is contrary to these policies and guidelines;

(c) Adverse Interest

A person will be regarded as having an adverse interest with respect to the Association if he or she is a party to a claim, application or proceeding against the Association;

(d) Initial Determinations

Where a decision is required as to whether any contract, transaction, matter or decision involving the Association will or will not, with respect to a particular Director, result in undue influence or any other form of conflict for purposes of these guidelines, the other Directors, acting in good faith and in the best interests of the Association, shall make a preliminary determination as to whether such state of affairs exists or may exist. If they determine there is no undue influence or conflict, by a unanimous vote of those who are present, that decision shall govern. Otherwise, the matter shall be determined in accordance with these guidelines.

For the foregoing purposes, an “**associate**” of a person is an individual who is a parent, child, sibling, spouse or common law partner of the person, and includes any organization, agency, company, corporation, trust, partnership, other business organization or any other individual, including a business partner, with a formal relationship to that person.

“**Cross-Appointed Director**” means any Director who is concurrently a director of an affiliate.

2. Duties of Directors

- (a) Every Director who either directly or through one of his or her associates, has or, acting reasonably, knows or should know that he or she may potentially have a conflict of interest with respect to a proposed or current contract, transaction,



matter or decision involving the Association shall disclose the nature and extent of the conflict of interest at the first meeting of the Board at which such disclosure may reasonably be made in the circumstances.

- (b) The declaration of conflict of interest shall be disclosed at the meeting of the Board at which the contract, transaction, matter or decision is first raised, if the Director is in attendance or at the next meeting, subject to the other provisions in these guidelines.
- (c) If the Director, or his or her associate, becomes interested in a contract, transaction, matter or decision after the first meeting at which the matter is raised at the Board, the Director shall make a declaration at the next meeting of the Board after the Director becomes aware or should have become aware that there is a conflict of interest.
- (d) In the case of an existing contract, transaction, matter or decision, the declaration shall be made at the first meeting of the Board after the individual becomes a Director or the conflict of interest can reasonably be identified as having come into existence.
- (e) After making such a declaration, the Director shall not vote or be present at the vote or during the discussions about, or otherwise attempt to influence the voting on a contract, transaction, matter or decision to which the conflict of interest relates, and the Director shall not be counted in any required quorum with respect to the meeting at which the vote is taken.
- (f) If a Director has made a declaration of interest or conflict of interest in compliance with these guidelines, the Director shall not thereafter be accountable to the Association for any profits that he or she may realize from the contract, transaction, matter or decision unless there is a separate cause of action available to the Association under a contract or on some other legal basis.
- (g) If the Director fails to make a declaration of his or her conflict of interest in a contract, transaction, matter or decision, as required by these guidelines, the failure may be considered to be grounds for termination of his or her position as a Director and/or as an officer or employee of the Association, and if there is any other business relationship between the Director and the Association, as grounds for termination of that relationship, at no cost to the Association.
- (h) If a Director, acting in good faith and with reasonable grounds, believes that any other Director is in a conflict of interest position with respect to any contract, transaction, matter or decision, the Director holding that belief may have his or her concern recorded in the minutes of a meeting of the Directors and the Director who



is alleged to have a conflict of interest shall thereupon be entitled to address the Board with respect to the alleged conflict of interest. Thereafter, at the request of the Director who recorded the initial concern, the Board shall vote on whether the Director who is alleged to have a conflict of interest is, in the opinion of the Board, in a conflict of interest for purposes of these guidelines, after the Director who is alleged to have the conflict of interest has absented himself or herself from the discussions and from the room during such discussions. If the Board concludes that the person alleged to have the conflict of interest does in fact have a conflict of interest, that Director shall absent himself or herself during any subsequent discussions or votes relating to or pertaining to the conflict and all related matters. The question of whether a Director has a conflict of interest shall be determined by a simple majority vote of the Board and shall be final. In the event of a deadlock, the Director shall be determined to be in conflict.

- (i) If the Board finds that the Director so alleged to have a conflict of interest does not have a conflict of interest, the Board shall then be entitled to vote on the contract, transaction, matter or decision and the votes of each Director, including the Director who was alleged to be in the conflict of interest position, shall be recorded.
- (j) Every declaration of a conflict of interest and the general nature thereof shall be recorded in the minutes of the Board.
- (k) Where the number of Directors who, by reason of the provisions of these guidelines, have been found to be in a position of conflict and therefore are prohibited from participating in a meeting is such that at the meeting a quorum of Directors had been present prior to such finding but thereafter the remaining Directors do not constitute a quorum (a quorum of Directors had been present prior to the finding but thereafter be determined in accordance with the by-laws of the Association, but subject to these guidelines) then notwithstanding any other provisions in the by-laws or in these guidelines, the remaining Directors will be considered to constitute a quorum, as long as they are not fewer than three in number.
- (l) Where in the circumstances outlined in these guidelines, the remaining Directors who are not prohibited from participating in the meeting are fewer than three, a special meeting of the members shall be called and the members shall be invited to elect interim Directors to act in the place of the Directors whose participation is prohibited, on such basis as the members may determine. If this is not feasible or practical in the opinion of the Chair of the Association (the “**Chair**”), the Chair may apply to the Ontario Superior Court of Justice on an ex parte basis for an order authorizing the Board to consider, discuss and vote on the matter to which the alleged conflict of interest pertains.



- (m) In any such application, the court may be requested to make an order, declaring that these guidelines do not apply in respect of the matter in relation to which the application is brought and that the Board may therefore give consideration to, discuss and vote on the matter in the same manner as if none of the Directors had any interest therein, subject only to such conditions and directions as the court may consider appropriate and may so order.

Cross-Appointed Directors

- (n) Notwithstanding any other provision of this policy, but subject to the *Canada Not-for-Profit Corporations Act*, a Cross-Appointed Director shall not be deemed to be in a conflict of interest with the Association or the affiliate for concurrently acting in both capacities or for acting in such capacities or voting on any matters relating to the Association and such affiliate (a “**Matter**”), provided that any such Cross-Appointed Director declares their interest as a director of such affiliate in their written declaration to the Association in the form attached as Schedule “A” when the Director first becomes a Cross-Appointed Director and annually thereafter for so long as they remain a Cross-Appointed Director.
- (o) Section 2(e) above describing the Duties of Directors generally shall not apply to a Cross-Appointed Director if they are acting in such capacity and Cross-Appointed Directors are allowed to be present at any discussions on the Matters, without any reduction in quorum, as well as vote on any Matter or proposed Matter.

3. Appeals

- (a) Where a Director has been found to be in a position of conflict in accordance with the procedures outlined in these guidelines, he or she shall be entitled to appeal. Such an appeal shall be launched by notice in writing given by the Director to the Chair not later than 5 days after the decision of the Board finding that the Director is in a position of conflict.
- (b) Upon receipt of such notice, the Chair shall cause an ad hoc appeal panel to be struck. The appeal panel shall consist of former directors of the Association, including past presidents of the Association where applicable, and shall be chaired by a past president of the Association chosen by the Chair.
- (c) The appeal shall be conducted by way of a new hearing, at which the Director who is alleged to have been in a conflict and the Director who has made the allegation shall be entitled to appear in person and present such evidence, whether orally or in writing, as they may choose. Any evidence to be presented in writing shall be submitted to the appeal panel not later than 5 days before the hearing of the appeal panel is convened. The chair of the appeal panel shall give not less than 5 days



notice, in writing, to the Director alleged to have been in a conflict position and to the Director making the allegation. The appeal panel shall adopt such rules as it deems appropriate in order to conduct the appeal, with fairness and openness being the prime objectives.

- (d) Any notice shall be given in person or by facsimile or e-mail to the address shown in the records of the Association.
- (e) The appeal panel shall consist of at least five members and need not consist of the same members for each appeal. A different appeal panel, constituted in accordance with these guidelines, may be struck for each appeal as required, but the chair shall always be a past president.
- (f) The appeal panel shall have the option, but shall not be required, to interview all of the members of the Board who participated in the deliberations that resulted in a finding of conflict, and to make such other enquiries and obtain such information as it feels is appropriate in the circumstances, and shall make such information available to the two Directors involved.
- (g) There shall be no further appeal from a finding of the appeal panel. The appeal panel shall have exclusive jurisdiction to determine all questions of fact and law in respect of the matters before it, and its decision shall be final and binding on the parties. No decision, order, direction, declaration or ruling of the appeal panel shall be questioned, reviewed or appealed in any court, and no order shall be made or process entered, or proceedings taken in any court, whether by way of injunction, declaratory judgment, judicial review or in the nature of certiorari, mandamus, prohibition, or otherwise, to question, review, prohibit or restrain the appeal panel or any of its proceedings.

4. Election of Directors

Notwithstanding any other provisions of these guidelines:

- (a) A member who intends to be elected as a Director of the Association shall, when nominated, and before being included on a slate of nominees presented to the members for a vote, declare to the chair of the Governance Committee in writing all actual or potential conflicts of interest that exist at that time and the chair shall ensure that such conflicts or potential conflicts are made known to the Governance Committee prior to the election and shall sign an agreement, in a form to be adopted by the Association and approved by the Board, confirming his or her willingness, if elected, to abide at all times with the policies of the Association, including policies governing conflicts of interest.



- (b) A member who intends to be elected as a Director of the Association shall not, when nominated, have held membership in or have been in a position in which such member owed fiduciary duties (in the capacity of a Director, officer, senior employee, or otherwise) to any of the entities listed in Schedule “B” attached hereto (“**Non-Aligned Organization**”) at any time within the one year period immediately prior to such nomination being made.
- (c) A Director, after being elected, shall have an ongoing duty at all times to declare conflicts of interest or potential conflicts of interest of a general nature, even if they do not relate to a specific contract, transaction, matter or decision that has come before the Board.
- (d) All Directors shall, annually, deliver a written declaration to the Association in the form attached as Schedule “A”.

5. Duties of Officers and Employees

These guidelines apply to officers and senior employees of the Association, with appropriate changes as required, in the same manner as they apply to Directors, taking into account the fact that officers and employees are not elected or appointed by the members and have or may have different fiduciary duties. These guidelines recognize that officers and employees owe a duty of loyalty to the Association and must not act contrary to its interests, and these guidelines shall apply as if the officer or senior employee were a Director.

6. Expanded Definition and Personal Benefit

For purposes of these guidelines, it is recognized that a Director, officer or senior employee of the Association shall not be entitled to obtain any personal benefit to the detriment of the Association or its members. Any person whose membership in another organization requiring allegiance to that organization that is paramount to or in conflict with the allegiance required by that person to the Association shall disclose such membership and may be regarded as in a position of conflict, except that a person whose membership in the other organization is demonstrably for the benefit of the Association will not necessarily be in a position of conflict. Notwithstanding the foregoing, any membership in or the assumption of any fiduciary duties (in the capacity of a Director, officer, senior employee, or otherwise) by any Director, officer or senior employee of the Association to any Non-Aligned Organization will be deemed to be a conflict of interest with the Association and any such involvement by a Director, officer or senior employee of the Association is prohibited. Provided that the aforementioned restrictions are complied with in good faith and without a breach of fiduciary duties to the Association, Directors, officers and senior employees of the Association shall be allowed to attend learning opportunities and continuing education programs provided by Non-Aligned Organizations. Regardless



of the relationship that a Director, officer or senior employee of the Association has with Non-Aligned Organizations, Directors, officers and senior employees of the Association owe a fiduciary duty to the Association and shall at all times share and disclose any information that they acquire or have knowledge of regarding the chiropractic ecosystem if such information impacts, affects, has an influence on or is relevant to the role of the Association or the Association's ability to deliver on its strategies. A person, whether a Director, officer or employee, shall be in a conflict of interest if confidential information belonging to the Association is used to the detriment of the Association by that person or by any other person with the assistance of that person (other than in the context where such information is disclosed by a Cross-Appointed Director or officers or senior employees of both the Association and an affiliate of the Association in a meeting of the board of directors of an affiliate of the Association). Confidentiality of information is addressed in a separate set of guidelines. Any breach of or failure to comply with this provision may be considered to be grounds for deemed resignation of such breaching Director, officer or senior employee's position as such.

Conflict of Interest

1. Common Law Concepts

At common law, there are many circumstances in which a conflict of interest might arise. These include the following:

- (a) where a Director exercises his or her powers in his or her own interest or for an improper or "collateral purpose", such as a desire to benefit the Director himself or herself, or to confer a benefit on a particular person or group of persons, rather than on the Association itself, whether in monetary terms or otherwise;
- (b) where a Director uses information gained from or through the Association to obtain a personal benefit, to the detriment of the Association, such as where there is a misappropriation of corporate property or opportunity;
- (c) where a Director has conflicting interests in his or her capacity as an employee of the Association;
- (d) where a Director has a personal or financial interest in an entity with which the Association is transacting business or may transact business or with which it is or may be in competition;
- (e) where a Director, officer or employee has a personal or financial interest in another entity or organization that is not an affiliate of the Association that is involved in the



health care field, that person shall be regarded as in a conflict of interest. By way of example, a professional advisor or consultant providing services to the Association will be in a conflict of interest if services of the same nature are provided to a competing health care organization without written consent of the Association;

- (f) where a Director has a personal or financial interest in a contract to which the Association itself is a party (other than as between the Association and an affiliate of the Association) and that is subject to review and a decision by the Board of which the Director is a member; or
- (g) where the Director has a relationship with another person, who may but need not be a member, and as a result is not impartial when representing the interests of the Association.

2. Duty of Care

Unlike a corporation with shareholders, the Association has no share capital and has no shareholders. Rather, it has members. The duty of Directors of the Association is not to the members. Although the common law is not clear on this point, these guidelines mandate that the ultimate duty of the Directors is to the Association itself and its goals, as set out in the objects and other provisions in its letters patent and by-laws.

The Articles of Continuance of the Association provide that the purpose of the Corporation is to represent, advocate for and promote the chiropractic profession, and to provide products, services and support to members and relevant other health care professionals and organizations.

3. Conflict of Duty

Directors, officers and senior employees must also avoid situations where their duties to the Association may conflict with duties owed elsewhere, save and except for duties owed to affiliates of the Association. This may arise where a Director, officer or senior employee serves as a director of another corporation (other than affiliates of the Association) that is competing or transacting with the Association. It may also arise where a Director, officer or senior employee has an association or relationship with another entity, other than with affiliates of the Association. For example, if two corporations (other than as between the Association and any of its affiliates) are both seeking to take advantage of the same opportunity, a Director, officer or senior employee to whom this policy applies may be in possession of confidential information received in one boardroom or related to the matter that is of importance to a decision being made in the other boardroom. The Director, officer or senior employee in the aforementioned scenario cannot discharge the duty to maintain such information in confidence while at the same time discharging the duty to make disclosure. The Director, officer or senior employee must disclose to the Association the existence of all such aforementioned situations and cannot act to advance any



interest other than those of the Association or any of the Association's affiliates. For greater certainty, subject to applicable laws, the by-laws of the Association and any applicable policies of the Association, there shall be no restriction or limitation on the information that can be shared by Cross-Appointed Directors or officers or senior employees of both the Association and an affiliate of the Association at meetings of the Board in relation to any of its affiliates or at the meetings of the board of directors of any of the Association's affiliates in relation to the Association or any other affiliate of the Association.



Schedule "A"

Form of Annual Declaration and Consent

TO: Ontario Chiropractic Association (the "Corporation")

AND TO: The board of directors thereof (the "Board")

Consent

I consent to serve as a director of the Corporation. I consent to the participation by any director at a meeting of the Board (or a committee of the Board) by such telephone, electronic or other communication facilities as permit all participants to communicate adequately with each other during the meeting.

Compliance with Policies and Codes

I confirm that I have read the articles, by-laws, resolutions and policies of the Corporation (the "Governance Documents") and I agree to comply with the Governance Documents that are applicable to the Board and its committees, as amended or supplemented from time to time.

Conflicts

In accordance with the Corporation's conflicts of interest policy, I make the following declaration:

I have an interest, directly or indirectly, in the following entities or persons (which disclosure includes entities in which I am a director or officer):

1. _____
2. _____
3. _____

This declaration is a general notice of interest pursuant to applicable legislation and accordingly, I should be regarded as interested in any contract made or transaction with any of the above entities or persons. I acknowledge that this declaration is in addition to my obligations to comply with the conflicts of interest policy in respect of any specific conflicts that may from time to time arise.

I declare the above information to be true, complete and accurate as of the date hereof.



DATED THIS day of , 20 .

Name of Witness

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

Print Name of Director

Schedule “B”

Non-Aligned Organizations

The following entities shall be considered to be not aligned with the Association’s interests:

- Alliance for Chiropractic
- Canadian National Alliance for Chiropractic
- International Chiropractic Association
- Chiropractic Defense Counsel
- Ontario Chiropractic Reform Working Group

This Schedule “B” will be reviewed and updated on an annual basis by the Governance Committee and the Board, or more frequently, as needed.