

**Hackensack University Health Network
Governance Policy Manual**

Corporate Opportunity

Policy #: 0003

Original Issue: September 22, 2004

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Purpose: To enhance the awareness of members of the Board as to the legal and ethical issues associated with their engaging in a transaction which the Governor/Trustee should reasonably know may be of interest to the Hackensack University Health Network and its Subsidiaries (the "Corporation").

To establish a process by which Corporate Opportunity Transactions are disclosed to members of the Board in sufficient detail and advance notice to allow the Board to take appropriate action with respect thereto.

Policy: A Governor/Trustee shall be determined to have breached his/her Duty of Loyalty to the Corporation by participating in a Corporate Opportunity Transaction, without making adequate prior disclosure to the Board and providing the Corporation with a first option to participate on the same terms, in lieu of the Governor/Trustee's own participation.

The elements of a related breach of the Duty of Loyalty (and of this Policy) shall be present when the officer or governor/trustee is presented with a business opportunity (i.e., a Corporate Opportunity Transaction) which:

- Is a matter the Corporation has the financial means to undertake;
- Is in line with the charitable business of the Corporation, and may be of particular advantage to it;
- Falls within the present or (reasonably expected) future plans of the Corporation; and
- Has a character such, that by appropriating the opportunity, the personal interest of the governor/trustee will be brought into conflict with the interest of the Corporation.

The implicated governor/trustee or officer shall have the affirmative obligation to promptly present in writing the details of the Corporate Opportunity Transaction to the Governance Committee before proceeding therewith.

The Governance Committee shall be responsible for evaluating all Corporate Opportunity Transactions of which it is made aware, and shall report its conclusions to the Board through the Executive Committee. The initial burden of proof shall be on the Board or other challenging party to demonstrate that the "business opportunity" pursued by the implicated officer or governor/trustee constitutes a "corporate opportunity." If that burden is satisfied, the burden shifts to the implicated officer/governor to justify the equitable nature of the transaction.

In evaluating "corporate opportunity" claims, the Governance Committee and the Board (absent the implicated officer/governor and any other governors/trustees not "Disinterested" as to the issue) shall consider the following factors, among others:

- i. Is the corporate opportunity an activity closely associated with the current or anticipated business of the Corporation?

- ii. Was the Corporation denied an opportunity in which it had a tangible interest or expectancy?
- iii. Was the officer or governor/trustee's action with respect to the opportunity "fair" under all relevant facts and circumstances?
- iv. Is there any reasonable, foreseeable harm to the Corporation from allowing the implicated officer or governor to pursue the specific Corporate Opportunity Transaction?

The Board (through the Governance Committee) shall be authorized to approve a Corporate Opportunity Transaction, of which they have been notified in advance pursuant to this Policy, if (i) the material facts of the Corporate Opportunity Transaction (including the interest therein of the implicated officer or governor) are disclosed or made known to the Committee; (ii) the Committee has evaluated the Corporate Opportunity Transaction in a manner consistent with paragraph 5 of this Policy; (iii) the Corporate Opportunity Transaction has been approved by a majority vote of the "Disinterested" members of the Committee, who have determined that there is no reasonable, foreseeable harm to the Corporation arising from allowing the implicated governor/trustee or officer to pursue the Corporate Opportunity Transaction; and (iv) the Committee's actions are ratified by the Board.

Regardless of whether a Corporate Opportunity Transaction is approved by the Board as provided herein, a governor/trustee or officer (a) may not use his/her fiduciary position with the Corporation to restrict the ability of the Corporation to compete with his/her competing enterprise; and (b) is forbidden from organizing another enterprise for the primary purpose of competing with the Corporation.

Any individual subject to this Policy who knowingly (as determined by the Board) fails to disclose an actual, apparent or possible Corporate Opportunity Transaction in accordance with this Policy, or who pursues a Corporate Opportunity Transaction without obtaining Board approval as called for by this Policy, may be subject to the following disciplinary and corrective action, as determined by the Board:

- Removal, in accordance with the Bylaws of the Corporation, if the individual is a member of the Board or a committee thereof.
- Dismissal from employment of the Corporation, if the individual is employed by the Corporation.
- Termination of any agency relationship by the President/CEO of the Corporation if the individual is an agent of the Corporation.
- Injunction against the use of inside or confidential information.

Furthermore, the Corporation reserves the right to seek monetary damages from any individual determined to be in breach of this Policy.

Reviewed: 08/07, 01/09