

HEALTH PROFESSIONS LICENSING AUTHORITY	
TITLE: CONFLICT OF INTEREST POLICY	
EFFECTIVE DATE: May 2004	REVIEW DATE: May 2005
BOARD: All Health Professional Boards of the Northern Territory	

POLICY

A policy to govern the disclosure of interest for all Health Professional Registration Boards established under Section 7(4) of the *Health Practitioners Act 2004*.

OBJECTIVES

To establish a set of guidelines to govern the declaration of conflicts of interest for all Health Professional Registration Boards established under section 7 (4) of the *Health Practitioners Act 2004*.

RATIONALE

The Health Professional Registration Boards of the Northern Territory (“the Boards”) are established under section 7(4) of the *Health Practitioners Act* (“the Act”). Schedule 3 clause 5 of the Act sets out the requirement for all members of the Boards to disclose conflicts of interest if and when they arise. The Boards’ mandate to protect the public is echoed in section 10 of the Act, which sets out the functions of the Boards. Members of the public rely on the Boards to carry out these functions effectively, and there is an expectation the Boards will act in the public interest.

It is important for the Boards to develop a set of guidelines governing the declaration of conflicts of interest, to ensure members comply with the requirements for disclosure set out in the Act.

DEFINITIONS

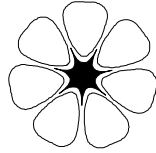
What is a Conflict of Interest?

A. Generally

Generally, a conflict of interest arises when an individual might benefit, or has the appearance of benefiting, personally from official actions. The concept includes conflicts that are actual, possible or perceived.

B. Conflicts Specific to Boards

Specific to the Boards, the term refers to situations in which financial or other personal considerations may compromise, or have the appearance of compromising, a Board member’s judgement in carrying out the functions of the Board.



The appearance of a conflict may be as serious and potentially damaging as an actual conflict, as the appearance of a conflict may undermine the public's confidence in the Board.

D. Declaration of Conflict

Given the expectation that Board members will place the interests of the Board in carrying out its functions under the Act above other interests, members are expected to disclose interests in matters which conflict, or may be reasonably thought to conflict, with their Board duty.

Examples of Conflict of Interest

The following examples of potential conflicts of interest are provided to assist Board members to determine whether they have a conflict:-

1. A member's private interests are likely to interfere with an official duty.

Examples

- The member stands to gain personally from the Board's decision.
- The member stands to gain financially from the Board's decision.
- The member is associated (via membership, contract or employment etc) with another organisation that is likely to be affected by the Board's decision.
- The member is associated with another person, and that person is likely to be affected by the Board's decision.

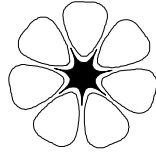
2. A member's private interests have the appearance of, or potential to, interfere with an official duty.

Examples

- The member will be affected by the Board's decision.
- The member is associated (via membership, contract or employment etc) with another organisation which may be affected by the Board's decision, giving the appearance that the member may be biased in their judgement (whether or not this is the case).
- The member is associated with another person who may be affected by the Board's decision, giving the appearance that the member may be biased in their judgement (whether or not this is the case).

In determining whether a member's private interests have the appearance of, or potential to, interfere with their official duty, it is useful to adopt the test used by the High Court of Australia in *Ebner –v- Official Trustee*, the test being "whether a fair minded lay observer might reasonably apprehend a Board member might not bring an impartial mind to the decision making process".

3. A member's indirect association with a person or group is likely to interfere with the member's official duty.



Examples

- The member's employer, friend, relative or acquaintance (etc.) stands to gain personally from a Board decision.
- The member's employer, friend, relative or acquaintance (etc.) stands to gain financially from a Board decision.
- A member's spouse, children or close relatives are associated with an organisation likely to benefit from a decision.

OPERATIONAL ISSUES

Given this policy affects all Board members, the following paragraphs provide practical guidelines for complying with the Act.

Guidelines for declaring a Conflict of Interest

Schedule 3, Clause 5 of the *Health Practitioners Act 2004* sets out the statutory requirements for declaring a conflict of interest:-

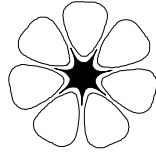
(1) If a member has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered or about to be considered by the Board, the member must disclose the nature of the interest at a meeting of the Board.

(2) A disclosure under subclause (1) must be recorded in the minutes and, unless the Board (exclusive of the member) determines otherwise, the member must not –

- (a) be present during any deliberations of the Board in relation to the matter;
or
- (b) take part in any decision of the Board in relation to the matter.

The following protocol has been developed to assist the Boards to comply with the statutory requirements of the Health Practitioners Act :-

1. A new agenda item entitled "Disclosures of Conflicts of Interest" will be added to agenda for Board meetings. The item will form a separate agenda item, and will be a standard feature of the agenda for meetings.
2. At the beginning of each Board meeting, members will be invited to declare any conflicts of interest in relation to any of the agenda items. If unsure, members are invited to seek the assistance of the Board to determine whether a conflict exists.
3. Any conflicts of interest declared by members will be recorded in the minutes.
4. When recording declarations of conflict of interest in the minutes, the entry should follow this example:-



- (a) Mr X declared an interest in relation to Y.
 - (b) Mr X was/was not present during any deliberations of the Board in relation to the matter.
 - (c) Mr X did/did not take part in any decision of the Board in relation to the matter.
5. Unless the Board (exclusive of member) determines otherwise, the member will physically remove him/herself from the room during deliberations.
 6. Unless the Board (exclusive of member) determines otherwise, the member will not take part in the decision of the Board in relation to the matter.
 7. If a Board member declares a conflict of interest, and the Board agrees they are not to not take part in any decisions of the Board, that member is not to receive any discussion papers etc in relation to the matter.

The above protocol will enable the Boards to keep accurate records of all declarations of conflicts of interests, in addition to how the conflict was dealt with by the relevant Board.

Breach of Policy

In the event a member breaches this policy, the Board will need to address the breach. Members should bear in mind:-

1. The Board needs to concern itself with conflicts of interest because the public expects the Board to serve the public good. If the Board fails in this duty, the trust of the public will be undermined.
2. Because the appearance of a conflict may undermine the public's confidence in the Board, the appearance of a conflict of interest can be as serious and potentially damaging as an actual conflict. The public's confidence may not be adequately restored, even when the mitigating facts of a situation are brought to light.
3. Omitting to declare a conflict of interest may constitute a breach of fiduciary responsibility, and as such the member would not be afforded the protection provided by section 16 of the Act.

It is therefore recommended that when a Board that includes a member who had a conflict of interest makes a decision, the Board should revisit the decision when the conflict becomes apparent. Having said that, the original decision will not be invalid.

Signed

_____/...../.....
Chairman

_____ Board of the Northern Territory

