



## Conflict of Interest

Version: 1.2  
Date Created: 08/17/2021  
Date Approved: 09/08/2021

*Printed copies are for reference only.*  
*Please refer to the electronic copy of this policy for the latest version.*

### Purpose

Everyone affiliated with PCHC is expected to make decisions fairly and objectively with the best interests of PCHC in mind. The purpose of this policy is to ensure PCHC and its employees comply with all legal and ethical standards when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Board member, employee, contractor, vendor, agent, resident or volunteer ("Persons"), or might result in a possible excess benefit transaction under the provisions of the Internal Revenue Code. As PCHC is a Department of Health and Human Services ("DHHS") grantee, these standards for managing conflicts of interest are also necessary to comply with DHHS regulations found at 45 C.F.R. § 74.42.

This policy provides guidance on how to identify a potential conflict of interest and what steps must be taken internally to address any actual or perceived conflict. While most transactions or arrangements that are affected by a conflict of interest are not illegal, the purpose of this policy is to ensure that any such transactions or arrangements are disclosed and approved in a manner that ensures compliance and avoids transactions tainted by a conflict, or that have the appearance of a conflict of interest. This policy should be read broadly in order to assist with reporting and resolving actual or perceived conflicts and to implement the spirit of the guidance provided in this policy.

### Policy Applies: (check all that apply)

- ☐ All Staff
- ☒ Administrative Staff
- ☒ Clinical Staff
- ☒ Providers
- ☒ Board of Directors
- ☐ Only applies to this or these sites:

### **I. Policy**

#### Definitions

1. Interest. A Person has an Interest if he, she, or they has/have, directly, or indirectly through a Relative or business partner:
  - a business relationship (e.g., an actual or forthcoming contractual or employment compensation arrangement) with: (1) PCHC; (2) an entity with which PCHC has entered (or is negotiating to enter) a transaction or arrangement; or (3) an entity that is a competitor or potential competitor of the Health Center;

- a financial relationship (e.g., a controlling or material ownership, or investment interest) with: (1) an entity with which PCHC has entered (or is negotiating to enter) a transaction or arrangement; or (2) an entity that is a competitor or potential competitor of PCHC;
- a fiduciary relationship (e.g., Board member or trustee) with: (1) an entity with which PCHC has entered (or is negotiating to enter) a transaction or arrangement; (2) an entity that is a competitor or potential competitor of PCHC; or
- a personal relationship with an individual who has a business, financial or fiduciary relationship as defined above. A personal relationship means a Relative), or a relationship based upon friendship or romance.

Any interest in a company through publicly-traded stocks, bonds or mutual funds available to the general public is not considered to be an Interest, provided the ownership or investment interest is less than one percent of the company's shares.

2. Conflict of Interest. A conflict of interest arises whenever a Person's Interest competes with or has the potential to compete with the best interests of PCHC or there is a perception of the same. *A conflict of interest is presumed to exist if a Person with an Interest is involved in any way in the transaction or arrangement in which he or she has such Interest.*
3. Relative. A "relative" shall mean a spouse, domestic partner, child, parent, and brother or sister by blood or marriage.

## II. Non-Exhaustive Examples of Conflicts of Interest

### 1. Board Members Shall not be Employees

No member of the Board of Directors shall be an employee of the PCHC *or a Relative of an employee* of the PCHC provided, however, that the Chief Executive Officer may serve as an ex-officio member of the Board of Directors as provided in the PCHC's Bylaws.

In the event a member of the Board of Directors has a familial relationship with an employee of the PCHC who is not a Relative as defined by this Policy, the Director shall disclose the relationship to the Board and, though not a disqualifying relationship, shall be required to abstain from voting on issues related to staff wages, benefits or other customary terms and conditions of employment.

### 2. Supplemental Income, Outside Employment, and Moonlighting

PCHC requires that all employees disclose in writing (and update as appropriate) any supplemental income, outside employment, or moonlighting positions outside of their work for PCHC. This enables PCHC to determine whether such outside employment or consultancy conflicts, or has the potential to or appearance of being in conflict with the interests of PCHC. ***PCHC's prior written approval of such outside employment or consultancy is required.*** If PCHC approves the outside employment/moonlighting arrangement, employees may not claim to be a representative of PCHC in connection with those outside activities.

### 3. Relatives/Nepotism

Relatives shall not supervise Relatives or otherwise influence a Relative's pay, promotion, or working conditions. If individuals who currently work together become Relatives, on a case by case basis, PCHC reserves the right to transfer one individual to another PCHC location and into another comparable position.

PCHC does not allow an individual to have access to their own, Relatives', or friends' medical records without following protocol which requires written informed consent by the patient. PCHC requires individuals who would like patient information from their own chart, a Relative's, or a friend's chart to complete a "Request for Information" and send the completed form to the medical records staff. The medical records staff will forward the individual the requested information. For additional information please see PCHC's HIPAA and confidentiality policies.

### 4. Consenting Relationships

Please see PCHC's Sexual Harassment policy for specific guidance on consenting relationships.

### 5. Personal Gain from PCHC Position

An individual may not use or attempt to use, in a manner contrary to PCHC's interests, his or her position or PCHC property or services to gain or attempt to gain anything for the private benefit of the employee. This includes services offered by Persons who are in a position to refer patients and employees to themselves. Exceptions require prior written authorization from the President/CEO.

An individual may not solicit or receive gifts or entertainment from vendors, suppliers of goods or services, or from Persons associated with or seeking association with PCHC.

An individual shall not use confidential information acquired in connection with PCHC related activities for personal gain or for other unauthorized purposes.

### 6. Contracting and Leasing

An individual may not enter into any contract or lease with PCHC if the individual is in a position to approve or influence PCHC's decision to enter into the contract or lease, unless such contract is deemed in the best interests of PCHC and has the approval of the President/CEO or the Board of Directors in the case of substantial transactions, per the PCHC bylaws. If the individual is not in a position to approve or influence PCHC's decision, the individual may enter into a contract or lease, provided the individual makes prior written disclosure of the nature and extent of any relationship with PCHC to the President/CEO and obtains written approval. An individual may not contract with PCHC to provide a service which is the same as or similar to the services that the individual provides to PCHC as an employee of PCHC. Such services may be provided only as a PCHC employee in the course of PCHC employment.

Only the President/CEO is authorized to enter into legal agreements on behalf of PCHC, except where the President/CEO has delegated this authority or is incapacitated in which case the Senior Vice President may enter into legal agreements only throughout the duration of the CEO's incapacity or until a successor is named by the PCHC Board of Directors.

## **7. Use of PCHC Name and Resources**

An individual shall not use PCHC's name, trademarks, trade dress, brand, facilities, equipment, stationery, supplies, personnel and other tangible or intangible resources except in connection with legitimate PCHC purposes. An individual shall not make unauthorized use of any PCHC resources, including the services of PCHC employees, for the personal benefit of the individual.

## **III. Initial, Annual, and Ongoing Conflict of Interest Disclosure**

The process for disclosing conflicts of interest is set forth below. All employees and persons affiliated with PCHC must disclose Interests that arise upon affiliation or employment with PCHC, and at any time an Interest arises after the initial or annual Disclosure Form have been completed.

Conflicts of Interest Shall be Avoided or Mitigated by Independent Process:

- No Person with a Conflict of Interest shall participate in PCHC's selection, award or administration of any contract or grant, regardless of how the contract or grant is funded, when a real or apparent conflict of interest exist.
- The only circumstance in which it is appropriate for PCHC to enter into a transaction or arrangement that is affected by a conflict of interest is when it benefits PCHC, and when the transaction or arrangement has been approved by the Board in an objective, independent and informed manner.
- Any exceptions to this policy shall be granted only by the President/CEO and/or Board of Directors.

### **1. Initial and Ongoing Disclosures**

Individuals must disclose any Interest upon hire, and are obligated to make disclosures of any Interests as they arise thereafter when the individual becomes aware of the Interest.

- Members of, and candidates for membership on, the Board of Directors shall make disclosures to the Chair of the Board of Directors ("Chair") and the Compliance Officer ("CO") prior to a vote by the Board on that candidate's membership.
- All Employees shall complete the Disclosure Form at the time of hire.
- All major vendors shall complete the Disclosure Form prior to being hired to perform a job or service.
- All other Persons required to make disclosures shall do so in writing to the CEO and the CO.

### **2. Annual Disclosure**

Each year, the CO or his/her designee shall send a copy of this Policy to all Interested Persons. Distribution of this Policy may be accomplished electronically, as part of the employee evaluation process, and/or as part of an annual training program. In addition, the CO shall notify Interested Persons (and other key employees or vendors, as determined appropriate by the CO) of the requirement to complete the Annual Disclosure Statement. Such individuals are expected to complete the Annual Disclosure Statement in a timely manner.

Any Interest shall be fully disclosed by any Person, regardless of whether a conflict of interest is determined to exist. All Persons to whom this policy applies and persons seeking to affiliate with PCHC (1) must disclose in writing (and update at least annually) all Interests that may create an actual or potential conflict of interest; and (2) provide a statement suggesting how such conflict of interest could be avoided or mitigated.

In order to facilitate disclosures, PCHC requires that all Persons (Directors, Officers, Providers, Referral Specialists, and major vendors) complete the Disclosure Form attached as **Appendix A:**

- upon initial employment, hire, or prior to a vote on their membership on the Board;
- annually; and
- any time an Interest arises that has not been previously disclosed.

a. **Review Process - Annual Disclosures**

- The CO shall review each Disclosure Statement and perform any investigation deemed necessary to ensure compliance. The CO shall report to the CEO and the Board of Directors any Interest(s) that impacts operations or transactions and make suggestions intended to mitigate or avoid conflicts.
- The Executive Committee of the Board shall review the completed initial and Annual Disclosure Statement for the President/Chief Executive Officer and the Compliance Officer and perform any investigation it deems necessary, including reporting to the Board of Directors, concerning such review and investigation.
- No person shall participate in the review or investigation of his/her own disclosure of an Interest.

**IV. Determining Whether a Conflict of Interest Exists**

1. **Interest Disclosed by Board Member or the President/CEO**

Where a Board member or the President/CEO has an Interest related to a transaction or decision by the PCHC Board of Directors, the following process shall be followed:

- a. The Board member or President/CEO must disclose the Interest to the Board.
- b. The Board member or President/CEO may (if he, she, they choose(s)) make a presentation to the Board regarding whether he or she (they) believes that the Interest creates a conflict of interest and shall respond to questions about that Interest from the Board.

- c. After such presentation, the Person with the Interest shall leave the meeting during the discussion, or vote, about whether a conflict of interest exists.
- d. If such conflict of interest is determined by the Board to exist, the Person with the conflict shall leave the meeting during any discussion of, and voting on, the transaction or arrangement that involves the conflict of interest.
- e. Where a Conflict of Interest exists, the Board shall, as it deems appropriate after looking at the facts and circumstances of a given transaction, appoint the President/CEO or a Board committee to investigate alternatives to the proposed transaction or arrangement and make recommendations to the Board.
- f. After exercising such due diligence to investigate alternatives to the transaction that involves a conflict of interest, the Board designee or President/CEO, as applicable, shall determine whether PCHC can obtain an equivalent transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
- g. If an alternative business arrangement that would not give rise to a conflict is not reasonably attainable, the Board shall determine by a majority vote of **disinterested** Board members whether, notwithstanding the conflict of interest,
  - 1. the transaction or arrangement is in PCHC's best interest;
  - 2. for its own benefit; and
  - 3. is fair and reasonable to PCHC

such that it would constitute an "arms-length" transaction (and be consistent with 45 C.F.R. Part 74 standards).

- h. *Appeal to AG or Superior Court.* If the Board of Directors is unable to make a decision regarding a transaction or arrangement, one or more Directors may request approval from the Attorney General or the court in accordance with Section 718(3)(B) of the Maine Nonprofit Corporation Act.
- i. A Conflict disclosed by an employee with substantial influence over a decision to enter a business transaction shall be addressed following a similar procedure. In that case, the disinterested decision makers shall make an independent determination as to whether the transaction is in the best interests of PCHC or whether the goods, services and benefits could be obtained by a different arrangement that does not give rise to a conflict of interest.

### 3. Interest Disclosed by Other Persons

Please complete the Conflict of Interest Disclosure Form and Certification, attached as Appendix A.

4. Additional Considerations and Guiding Principles

- a. If an Interest that is disclosed involves PCHC's internal procurement process, the process shall be conducted in accordance with this policy and PCHC's Procurement Policy, in consultation with the CO.
- b. If an Interest is disclosed by a Physician or other provider, legal counsel shall be consulted to review the transaction to ensure compliance with the Physician Referral Laws ("Stark Law"), the Anti-kickback law, and other related state or federal laws.
- c. *Pervasive Conflicts of Interest.* In circumstances where an Interest leads to a continuing or pervasive conflict of interest, an individual may be required by the Board or the President/CEO, as applicable, to withdraw from his or her position with PCHC unless the individual, Relative or business associate chooses to disassociate from the outside position that causes the Conflict of Interest.

**V. Consequences for Violation**

If the Board or President/CEO, as applicable, has reasonable cause to believe that a Person has failed to disclose an Interest, the Person shall be informed of the basis for such belief and afforded an opportunity to explain the alleged failure to disclose.

If, after considering the response of the Person who failed to disclose an Interest, and making such further investigation as may be warranted under the circumstances, the Board or President/CEO determines that the individual has in fact failed to disclose an Interest in accordance with this Policy and PCHC's Standards of Conduct, appropriate corrective and/or disciplinary action shall be taken, including but not limited to removal of the individual from the selection, negotiation, or administration of any contracts or grants and/or termination of employment.

**VI. Records of Proceedings**

1. Board Records

The minutes of the Board and all committees with Board-delegated powers and those records as determined by the President/CEO shall contain:

- The names of the Person who disclosed or otherwise were found to have an Interest in connection with an actual or potential Conflict of Interest and the nature of the Interest; any action taken to determine whether a conflict of interest was present; and the Board or President/CEO's decision, as applicable, as to whether a Conflict of Interest in fact existed.
- For transactions where a Conflict of Interest has been disclosed or otherwise found to exist, the names of the persons who were present for discussions and

votes relating to the transaction or arrangement, and the names of the persons who recused themselves; the content of the discussion, including any alternatives to the proposed transaction or arrangement or PCHC's best interest; and a record of any votes taken in connection therewith.

2. Record Retention

The Clerk shall maintain a file containing a copy of the Annual Disclosure Statement for each member of the Board of Directors and each officer. Copies of the Annual Disclosure Statement for all persons, other than members of the Board of Directors and officers, shall be maintained electronically by the Compliance Officer.





*(Appendix A to Conflict of Interest Policy)*

## **CONFLICT OF INTEREST DISCLOSURE FORM AND CERTIFICATION**

As a Director, Officer, Provider, Referral Specialists, or major vendor of PCHC, I understand that I owe certain duties to PCHC including, but not limited to, a duty of loyalty. I understand that one aspect of fulfilling my duties to PCHC is to avoid actual or potential conflicts of interest where my allegiance might be divided, or appear to be divided, between a position of responsibility to PCHC, and another professional, personal, business, or volunteer position or responsibility. I further understand that PCHC's Standards of Conduct prohibit my acting against PCHC's best interests.

To help avoid actual or potential conflicts of interest, I am disclosing Interests (as defined in PCHC's Conflict of Interest Policy) that may create or appear to create a conflict with regard to my duties to PCHC. I invite any further inquiry by PCHC that it deems appropriate.

### **AGREEMENT AND DISCLOSURE**

I have read PCHC's Conflict of Interest Policy and agree to comply with the terms of the policy.

I have completed the annual disclosure worksheet attached to this Policy, which is designed to help me recall and disclose any relationships that may constitute an Interest.

I represent and certify as follows:

A. I understand the definition of Interests set forth in the Policy *AND*

- a. I have carefully reviewed my existing relationships, and I know of no professional, business, personal or volunteer position or responsibility, including vendor situations, that would constitute an Interest as set forth in the Policy, might give rise to an actual or apparent Conflict of Interest or otherwise impair by ability to make decisions in the best interests of PCHC \_\_\_\_\_ (initial here), *OR*
- b. I hereby disclose any current or potential Interest of which I am presently aware, including:
  1. *Any business relationship (e.g. an actual or forthcoming compensation arrangement either by contract or employment) with: (1) A key employee of PCHC; (2) an entity with which PCHC has entered (or is negotiating to enter) a transaction or arrangement; or (3) an entity that is a competitor or potential competitor of PCHC (list here):*

2. *Any financial relationship* (e.g. a controlling or material ownership, or investment interest) with: (1) an entity with which PCHC has entered (or is negotiating to enter) a transaction or arrangement; or (2) an entity that is a competitor or potential competitor of PCHC (list here):
  
3. *Any fiduciary relationship* (e.g. board member, director, trustee, or officer) with: (1) an entity with which PCHC has entered (or is negotiating to enter) a transaction or arrangement; or (2) an entity that is a competitor or potential competitor of PCHC (list here):
  
4. *Any personal or familial relationship* (immediate or more remote relative) with an individual who has a business, financial, or fiduciary relationship with: (1) a PCHC employee; (2) an entity with which PCHC has entered (or is negotiating to enter) a transaction or arrangement; or (3) an entity that is a competitor or potential competitor of PCHC (list here):
  
5. *Any other relationship or arrangement* that does or has the potential to interfere with my ability to act in the best interests of PCHC (list here):

B. For any disclosures of a conflict or potential conflict of interest listed above, I suggest the following means of mitigating the conflict:

*I certify that the above information is true and accurate to the best of my knowledge.*

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Signature of Director, Officer, Employee, Resident, Volunteer, Vendor/Contractor

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Print Name of Director, Officer, Employee, Resident, Volunteer, Vendor/Contractor

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Date

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Position with or Connection to the Corporation (PCHC)