

CONFLICT OF INTEREST

Clarification and Information

Loyalty and conflict of Interest

All volunteers who play and role in the governance of the association or any of its segments, and all employed staff, owe duties of care and loyalty to the association and are potentially liable to the association should they fail to act consistently with those duties.

What are duties of care and loyalty?

This means that any volunteers or staffs are required to act reasonably and in the best interests of the association, to avoid negligence or fraud, and to avoid conflicts of interest. In the event that the duties of care and/or loyalty are breached, the person breaching the duty is potentially liable for any damages caused to the association as a result of the breach.

What legal principles govern the duties of care and loyalty?

The duty to act in the best interests of the association

This duty is very broad, requiring volunteers and employees to exercise ordinary and reasonable care in the performance of their duties, exhibiting honesty and good faith. Thus, as association volunteer or employee has the duty to exercise due care when acting on behalf of the association, to attempt to avoid generating legal liability for the association, to attempt to further the association's interests rather than the individual's own interests or the interests of any other party, and to protect any confidential information obtained while serving in the fiduciary role with the association.

The duty to avoid conflicts of Interests

The duty of loyalty encompasses a duty to avoid conflicts of interest and to provide undivided allegiance to the association's mission. A Conflict may exist when a volunteer or employee of the association anticipates in the deliberation and resolution of an issue important to the association while the individual, at the same time, has other professional, business, or volunteer responsibilities outside of the association that could predispose or bias the individual one way or another regarding the issue. It is important to avoid apparent conflicts of interest as well as actual conflicts.

Corporate opportunities doctrine

The duty of loyalty specifically prohibits competition by an association volunteer or employee with the association itself. Those individuals may generally engage in the same "line of business" or areas of endeavor as the association, provided it is done in good faith and without injury to the association. One form of competition that is not permitted, however, is appropriating "corporate opportunities." A corporate opportunity is a business prospect, idea, or investment that is related to the activities or programs of the association and that the individual knows, or should know, would be in the best interests of the association to accept or pursue. An association's volunteer or employed representatives may take advantage of such a corporate opportunity independently of the association only after it has been offered to, and rejected by, the association.

How does one minimize risk to oneself and to the association?

1. Place the association's interests first in dealings on the association's behalf. Be alert to possible opportunities and risks, and promptly inform appropriate personnel concerning those opportunities or risks.
2. Be alert to possible conflicts of interest and to circumstances that could create even the appearance of a conflict of interest and at a minimum disclose those conflicts before taking part in any deliberations or decisions on subjects where conflicts or possible conflicts exist.
3. Be aware that refusal may be appropriate where an actual or apparent conflict of interest exists.
4. Preserve the confidentiality of information acquired in one's capacity as a volunteer or employee of an association wherever it appears that the information is proprietary to the association.
5. Do not appropriate corporate opportunities available to the association.
6. Adoption of a policy governing the conduct of governance volunteers and staff relative to addressing conflict of interest may help avoid problems in this area.

Areas in which conflict may arise

Direct Interests – Conflicts of interest may arise from the volunteer's or employee's involvement with:

1. Persons and firms supplying goods and services to the MDHA.
2. Persons and firms from whom MDHA leases property and equipment.
3. Persons and firms with whom MDHA is dealing, or planning to deal, in connection with the purchase or sale of real estate, securities, or other property.
4. Donors and others giving support to MDHA.
5. Agencies, organizations and associations which effect the operations of MDHA.

Indirect Interests - Conflicts of interest may also arise indirectly through relationships MDHA has with people or organization's related such as:

1. The volunteer's or employee immediate family.
2. An estate or trust of which the volunteer or employee, or a member of his/her immediate family, is a beneficiary, personal representative or trustee.
3. A company of which the volunteer or employee, or member of his/her immediate family, is an officer, director or employee, or in which the office or trustee, or a member of his/her family possesses a stock or other proprietary interest.

Nature of Conflicting Interest

A conflicting interest may be defined as an interest, direct or indirect, which might affect, or might reasonably be thought by other to affect, a person's judgement or conduct as a volunteer or employee. Such an interest might arise through involvement by an MDHA volunteer or employee with organizations or individuals such as:

1. Owning stock or other proprietary interests.
2. Holding debt or debt securities.
3. Holding office, servicing on the board of directors, serving on editorial boards, participating in management, or bring otherwise employed (or formally employed).
4. Receiving remuneration for services with respect to individual transaction (e.g. honoraria for participation in component, corporate or other organizational events).
5. Receiving gifts or unsecured loans.
6. Obtaining an interest in real estate, securities or other property which MDHA is considering buying or leasing.
7. Disclosing or using inside information relating to MDHA's activities for person profit or advantage, regardless of the potential for financial gain.
8. Receiving remuneration for published articles or editing services.

(The above list is only illustrative of areas in which conflicts of interest may arise.)

Michigan Dental Hygienists' Association Conflict of Interest Policy

The Michigan Dental Hygienists' Association, a Michigan not-for-profit corporation (MDHA), is operated for specific purposes and not for the private gain of any individual or entity. As a result, each volunteer or employee of MDHA, in any business dealing or acting for the association in any way is subject to the following:

1. Any actual or potential conflict of interest on the part of any volunteer or employee shall be disclosed to the board of trustees and made a matter of record.
2. Any volunteer having an actual or potential conflict of interest on any matter shall abstain from voting on that matter. The minutes of such meeting shall reflect the existence of any such actual or potential conflict and that the volunteer abstained from voting on the matter of question.
3. The board of trustees, council, task force, steering committee, etc., when informed that a volunteer has an actual or potential conflict of interest in a transaction before the body, shall not vote on such transaction unless the body has first determined that (a) MDHA is entering into the transaction for its own benefit; (b) the transaction is fair and reasonable to MDHA; (c) MDHA could not, with reasonable effort and under the circumstances, obtain a more advantageous arrangement.
4. Where a transaction in which a volunteer or employee has an actual or potential conflict of interest is entered into on the approval of a committee or person authorized by the board of trustees, the body shall ratify the transaction at its next meeting by a majority vote if it determines in good faith that the person or committee made the determination required by Paragraph 3 above.
5. Volunteers and employees will remain loyal to MDHA and act in the MDHA's best interests at such times when (a) they participate in or vote upon any matter involving the activities of the MDHA; or (b) represent MDHA among persons or entities doing or interested in doing business with MDHA.
6. Volunteers and employees will avoid investing, purchasing property or other assets, or competes in other opportunities which may be of interest to MDHA, without first offering the investment or opportunity to MDHA.
7. Volunteers and employees will avoid investing or participating in any organization that competes or may compete with or is in the same business as MDHA without prior disclosure to and approval by the board of trustees.

8. Volunteers and employees will not seek from any person or entity or interested in doing business with MDHA a gratuity, favor, benefit, loan or gift and avoid accepting any gratuity, favor, benefit, loan or gift of greater than normal value beyond the common courtesies usually associated with accepted business practice, and will not accept any commission or payment of any kind in connection with work performed, services rendered or supplies provided to MDHA (other than reimbursement authorized by MDHA prior to expenditure).
9. Volunteers and employees will not use their position, nor any information (confidential or otherwise) acquired through or from MDHA, for personal profit or advantage.
10. Volunteers and employees will not enter into financial or loan transactions with MDHA.
11. Volunteers and employees will notify the board of trustees if they acquire or maintain an ownership interest in or serve in a position of responsibility for (a) an entity doing or interested in doing business with MDHA; or (b) an entity which is superior, subordinate or related to MDHA through ownership or control; or (c) an entity which competes with or may compete with or is in the same business as MDHA.
12. Volunteers and employees will ensure that members of their immediate family will not engage in any of the activities contemplated by Paragraph 5-11 above without prior disclosure to and approved by the board of trustees, and report to the board of trustees any actual or potential conflict of interest involving members of their immediate family.
13. All new volunteers and employees shall be advised of this policy prior to commencing the performance of duties as a volunteer or employee of MDHA.

Adopted 2/9/97
by the Board of Trustees

Re-typed 10/31/2015