

Conflicts of Interest Policy, Procedure, and Disclosure

Note: The Enron, Worldcom, and other business corporation scandals led to the passage in 2002 of the Sarbanes-Oxley Law which, among many other features, shone a spotlight on conflicts of interest in the public company context. Many nonprofit organizations and associations have long had conflicts of interest policies for their senior leaders. The Form 990 annual tax return for exempt organizations asks whether there is a conflict policy in place. The new emphasis on these policies has suggested to many nonprofits that their policies should be updated and enhanced. Here is a relatively succinct approach that does three things: (a) explains the organization's policy on conflicts, (b) sets out the procedure to be used in dealing with conflicts, and (c) provides a disclosure form for use by volunteer leaders. A simpler "bare bones" conflict policy is provided later along with others recommended in the Form 990.

Conflicts of Interest

The International Transplant Nurses Society (ITNS) and its volunteer leaders are dedicated to serving the interests of the Association's constituency in the most honorable and ethical manner possible. Among the Association's duties is the responsibility to provide assurance to its constituencies that debates, decision making, and all governance at the Association are conducted in an objective and bias-free context. Among the duties of the volunteer leaders of the Association is a duty of loyalty—to place the best interests of the Association uppermost when acting on the Association's behalf. This duty of loyalty, or "fiduciary" duty, encompasses the obligation to avoid or disclose any "other interests" that could dilute, diminish, or divide a leader's unqualified loyalty and complete commitment to the Association. Where such interests exist or even appear to exist, they are "conflicts of interest" that the Association is responsible to manage in order to ensure reasonably bias-free governance.

Summary of the Policy

The Association's policy is to require that volunteer leaders disclose "other interests" as defined in this policy at least once each year or more frequently if "other interests" arise. Then the governing board, or delegated representatives of the governing board, must decide what if anything to do in reaction to disclosures of "other interest" according to the Association's procedures for doing so. In most cases it will be decided that the proper corrective measure is disclosure of the "other interests" to the governing board or other governance body of the Association. But in some cases, the volunteer leader might be asked to "recuse"—refrain from participating in debate or resolution of matters where the volunteer leader has "other interests." In rare cases the volunteer leader might be asked to resign from the position on the board or elsewhere in the governance structure of the Association.

"Other Interests"

1. To what volunteer leaders does this policy apply?

The governing board has determined that the policy applies to officers, directors, senior executives, committee chairs and members of the Association.

2. What "other interests" are to be disclosed?

Disclosure is expected of these "other interests":

- a) Ownership, employment, or volunteer or agency interest or involvement in a commercial entity or

nonprofit organization that competes with the Association;

b) Ownership, employment, or volunteer or agency interest or involvement in a commercial entity or nonprofit organization that is, or seeks to be, a vendor of products or services to the Association; or

c) Position as spokesperson, consultant, employee, or agent for another commercial or nonprofit organization that advances opposing or adverse public policy positions from those of the Association.

Note: The “Association” includes the Association’s subsidiaries and affiliates, such as chapters.

Note also: The volunteer leader should disclose these “other interests” personally for the employer or company, and for close business associates and family members.

3. When and how is disclosure to be made?

Disclosure is to be made at least annually when requested by the governing board, and after that at any time throughout the year when an “other interest” arises or becomes known that was not disclosed at the time of, or has significantly changed since, the annual disclosure. Disclosure should always be in writing. Disclosure forms are provided for that purpose. Volunteer leaders should feel free to provide additional information as appropriate.

4. What information is to be disclosed about “other interests”?

The volunteer leader should provide sufficient information about any “other interest” so as to permit an evaluation of what effect the “other interest” might have on the leader’s participation in the Association’s governance.

5. What about confidential information on “other interests”?

Any confidential information should be clearly marked as such on the volunteer leader’s disclosure. The Association will endeavor to keep the information confidential. But if a requirement for confidentiality precludes the governing board of the Association from fairly evaluating the disclosure, the Board may respond accordingly in its recommendation regarding corrective measures.

Corrective Measures

It is the Association’s prerogative, not the disclosing volunteer leader’s, to make determinations regarding corrective measures with respect to “other interests.” The governing board or its delegated representatives will do so. Among the corrective measures available to be recommended are these:

1. **Disclosure to the governance body.** In most cases, it is expected that the possibility of subjectivity or bias will be sufficiently offset by disclosing the “other interest” to the entire governance body of which the disclosing volunteer leader is a member. That governance body will be expected to take the individual’s “other interest” into consideration when discussions, debates, or decisions occur in the governance body. The Association, its governing board, and the volunteer leader will all have fully discharged their duties.

2. **Recusal.** In some instances, it may be determined that the avoidance of conflicts of interest, or even the mere appearance of conflicts of interest, will dictate that the disclosing individual should avoid discussions, debates, and decision making on subjects related to the disclosure. The volunteer leader will

remain a member of the governance body affected but will withdraw from portions of meetings or activities appropriately.

3. **Resignation.** There could be situations, expected to be rare, in which the volunteer leader's "other interest" is so extensive or pervasive that, in the view of the Association's governing board or its representatives, the leader's involvement in discussions, debates, or decision making in the pertinent governing body on any subject will be adversely affected. In that case the leader will be asked to resign. If resignation is not forthcoming, the governing board will decide on alternatives consistent with the Association's Bylaws and governing state law.

Procedures

The appropriate steps in implementing this policy are these:

1. **Annual disclosure.** Volunteer leaders will be asked to complete the attached disclosure form annually. Forms should be submitted at other times as well if "other interests" arise or become known.

2. **Review, evaluation, and recommendation.** Representatives of the governing board, appointed by the President, will review the annual disclosure forms. The volunteer leader may be asked to provide additional information as a result of this review. If this reviewing body determines that no action is required, then none will be taken. If the body determines that disclosure to the full governing body on which the volunteer leader sits is the appropriate corrective measure, this will be undertaken with notice to the volunteer leader. If other corrective measures are recommended, the matter will come before the governing board.

3. **Governing board.** The governing board makes the final determination of the appropriate corrective action to be recommended to the volunteer leader and any subsequent action or procedures that may become expedient.

Any questions about the Association's policy or procedures should be raised with the Executive Director of the Association.

Disclosure of Other Interests

As a volunteer leader of ITNS (the "Association"), I recognize that the Association must provide bias-free governance to the Association's constituency, and that I owe a duty of loyalty to the Association. One aspect of fulfilling my duty is to avoid or disclose "other interests" according to the Association's policy and procedures on conflicts of interest. I am therefore disclosing the following "other interests" as defined by the Association. I will provide further information if requested and will cooperate with any review and evaluation on behalf of the Association.

1. Any ownership, employment, or volunteer or agency interest or involvement in a commercial entity or nonprofit organization that competes with the Association:

