

COLORADO MEDICAL SOCIETY

BOARD OF DIRECTORS OPERATIONAL POLICIES: STANDARDS OF CONDUCT

On July 16, 2010, the Colorado Medical Society (“CMS”) Board of Directors adopted the following Operational Policies: Standards of Conduct as provided for under Chapter XXI, Section 3 (“Policy Statements”) of the CMS Bylaws.

1. Duties of Care & Loyalty

1.1 Overview

Colorado statutes set forth the standard of conduct for directors and officers of nonprofit organizations (“board members”) and require directors and officers to act “in good faith; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the non profit corporation.” See, C.R.S. § 7-128-401. These standards are applied based upon the facts and circumstances of each situation. However, the key is for directors and officers to act and make decisions in a manner that serves the best interests of the Colorado Medical Society (“CMS”). Those interests are identified in the purpose clause of the CMS Constitution which reads as follows:

The purposes of this society are to promote the science and art of medicine, the betterment of public health, and the welfare of the medical profession and the patients it serves; and to promote the similar interests of its component county and district medical societies. Constitution of CMS, Article II (September 2005)

1.2 Duty of Care

The duty of care includes the responsibility of a board member to act as a good steward for the organization by using reasonable care and good judgment when making decisions on behalf of the organization. A member of the Board must exercise due care when conducting activities, making statements, or otherwise acting on behalf of CMS. A board member should always look after CMS’ best interests---not the best interests of the board member or any other entity.

1.3 Duty of Loyalty

The duty of loyalty requires board members to be faithful to the organization, avoid conflicts of interest, maintain confidentiality of information and support the positions, policies and decisions of the CMS board.

1.4 Conflict of Interest Policy

Conflicts of interest may exist where a board member participates in deciding an issue while, at the same time, having other financial, business, professional or personal interests that could lead the board member toward bias or predisposition on the issue or appear to present such a conflict. Conflicts should be disclosed so that the CMS board can decide whether or not a conflict exists and how to deal with it. CMS adopted a Statement of Policy on Conflicts of Interest which is incorporated into these Operational Policies. Each board member is expected to review and sign the statement annually. This is to ensure that any conflicts of interest (as defined in the Statement of Policy) are identified and disclosed so that the Board can take appropriate action.

1.5 Confidentiality & Executive Session

Another element of the duty of loyalty is to maintain the confidentiality of information presented or discussed in executive sessions of the Board. Matters relating to personnel issues or legal advice from CMS' legal counsel are matters that are typically addressed in executive session. Board members must always maintain the confidentiality of such information as part of their duty of loyalty to CMS. In addition, there may be matters of a proprietary nature or relating to legislative strategies that are discussed during Board meetings which should also be treated as sensitive and potentially confidential. When in doubt, the board member should seek clarification from the President or the Board.

2. Conduct of Board Members

1.1 Prior to Board Meetings

In order to be prepared to discuss and decide issues presented at a board meeting, members of the board should review all written materials prior to the board meeting. In addition, and where appropriate, board members should seek out and solicit information from the membership, constituent specialty groups or local societies and other resources which may contribute to the discussion and decisions. **Board members may also wish to engage in discussions with other board members prior to the meeting in order to clarify issues.**

1.2 Attendance at Board Meetings

CMS board members are expected to attend each meeting of the board either in person or by telephone and to actively participate in those meetings. If a board member knows that he/she will not be able to attend, the board member should communicate that to the CMS Executive Director. If a board member misses **more than 3 out of 4 regularly scheduled board meetings in any one board calendar year**, the President shall meet with the board member to determine whether or not

the person should continue to serve on the board. If the President determines that a local constituent organization represented by the board member should be advised of the board member's absences, the President may inform the local organization of the situation.

1.3 During Board Meeting

Board members are expected to conduct themselves in a professional and courteous manner at all times during board discussions. Board members should respect opposing views and encourage diverse opinions and attitudes during the discussion. They should also give consideration to all points of view; seek input from various constituencies; consider the financial resources available to CMS; and focus on strategy. Those board members expressing a different view or position should not be made to feel that their opinions do not matter. Each board member has an affirmative duty to address each issue and should speak out during the board meeting. For example, the Board's Consent Agenda should be reviewed carefully by each board member and if there are any items on the Consent Agenda which should be discussed, the board member should raise the issue. As a corollary, the person chairing the meeting should make every effort to encourage and ensure that each board member has the opportunity to address the issues. The atmosphere of the meeting should be perceived as a "safe environment" where board members may speak freely. Once the board makes a decision, however, the duty of loyalty requires each board member to support that decision **subject to Section 1.4.below**. Board members should not criticize fellow board members inside or outside the Board meeting

Members of a Board (whether CMS, local society or otherwise) have a duty of care and loyalty to that organization regardless of who appoints, nominates or elects the person to the Board. CMS Board members who serve on other boards or who are appointed by constituent organizations are reminded that their duty of loyalty while acting as a CMS board member is to CMS---not to any other organization. Similarly, when such a board member is participating at the local society level, the board member's duty of loyalty is to that organization. One metaphor that is often used in these situations is that some board members wear "two hats"---one for each board. In keeping with that metaphor, at CMS meetings a CMS board member should always act in the best interests of CMS and only wear the CMS hat. The obligation is reversed when a board member is attending another organization's board meeting as a member of that board.

1.4 After Board Meeting

1.4.1 Information to communicate

In order to further transparency and full disclosure, board members are encouraged to communicate actions, positions or policies adopted at CMS board meetings to the membership and/or constituent organizations. Such communications should include the motion as presented (as well as any amendments); information related to the motion; discussion of the motion; arguments in favor and against the motion; and the final vote. The board member may also disclose how he/she voted and the reason for the decision. However, care should always be taken to ensure accuracy and to not discredit CMS, the board or other board members. In addition, board members should not discuss confidential proceedings (e.g. executive session) outside the Board room; interfere with the duties of staff; or speak on behalf of CMS unless authorized to do so.

1.4.2 Options for board members who do not prevail on issues

In the event that a board member's position does not prevail at the board meeting, the board member has several options. First, the board member may seek re-consideration of the decision at the meeting or at a future board meeting. Typically, this is the result of additional information coming to the attention of those who voted in the minority. A board member may also seek the support of component societies when seeking reconsideration by the board. If the board decides not to reconsider the issue, the board member may petition the House of Delegates to reconsider and/or change the policy. While the House of Delegates is only scheduled to meet once a year, it is possible to call a special meeting of the House of Delegates by a vote of the House at a previous meeting or by order of the Board of Directors or upon a petition signed by at least 1/3 of the accredited members of the House of Delegates representing at least 1/5 of the component societies. (CMS Bylaws, Chapter XIII, Section 3 "Special Meetings of Society"). **Finally, a board member could seek to have the CMS position augmented by seeking the publication of a "minority" report to accompany the CMS position.**

1.4.3 Duty of Loyalty

Board members shall be respectful and supportive of all decisions made by the CMS board of directors regardless of the member's individual opinion. Once the board has decided (after input and discussion), each board member shall support that decision and not speak against it.

A board member in the minority may **always** address the House of Delegates when seeking reconsideration or reversal of a board decision. Under limited circumstances and with clear disclaimers, a board member could address a legislative committee; however, the board member should use his/her best efforts to identify another person to speak on behalf of the

other entity **whenever possible**. It is not appropriate for a board member to organize opposition or actively campaign against a Board position or policy which includes, but is not limited to, legislative hearings , discussions with the media/press, public meetings, or private meetings with legislators or decision makers **(except as provided in Section 1.4.4)**.

1.4.4 Release from duty of loyalty

In **very rare** circumstances, a board member of CMS may find him or herself in the position of having advocated a position or policy which is not in accord with the policies of CMS. As a general rule, a CMS board member is expected to act and speak in a manner that is consistent with CMS positions and policies. However, the CMS Board of Directors recognizes that there may be unique situations in which a board member wants to support a policy or position which is different than that of CMS.

In those **very rare** situations, a board member may engage in such activity provided that the board member first notifies **the CMS President** of the board member's **request to engage in the activity**. **The Board President has the authority to grant the request or, in the alternative, the President may notify the Board of the request. The Board shall have seventy-two (72) hours after receiving notice of the request via mail, telephone or electronic means from the CMS President to take action, if any. Any action by the Board to deny the request shall require a vote of two-thirds of the directors present and voting (provided a quorum is present).** If the request is not denied by the Board, the board member may proceed provided that he/she makes clear in any written or oral communication that the board member is not speaking on behalf of or as a representative of CMS; that the board member is only speaking in his/her individual capacity **or on behalf of another organization**; that the board member discloses the position of CMS in any oral or written communications; and that the board member does not discredit or criticize other board members or staff. If the CMS Board objects after receiving notice, the board member shall not act or speak in support of the other position so long as that person is a board member of CMS **except as otherwise provide in this Policy. The President shall report to the Board each month on any waiver requests received as well as the action taken by the President in response to such requests.**

If the CMS Board is asked to make a decision in these rare circumstances, the CMS Board shall consider the impact of granting a release from the duty of loyalty where such an action may do damage to either CMS or its positions. The issue of the "integrity" of a CMS board decision will also be considered. One example of situations in which the board would not

grant a release from the duty of loyalty would include a CMS policy or position in opposition to expanding liability caps for physicians.

1.5 Decision Making

CMS Board decisions can be made based upon a majority vote (with certain exceptions such as adoption of Standing Rules by the board which requires a 2/3rds vote). However, the Board recognizes that there are issues which because of the subject matter or the level of interest as to those issues, that a vote of more than a majority may be preferred. This will be a subjective test depending on the facts and circumstances of each situation. However, wherever possible, the board should seek to have as many board members agree to the policy/position.

1.6 Ongoing board education

As part of the Board's ongoing commitment to having a well-informed Board, CMS shall take an active role in ensuring that Board members are made aware of and understand these Operational Policies. Policies should be communicated in advance, clearly articulated and applied consistently. Education efforts may include, but not be limited to, the following: orientation programs; mentoring of newer board members; discussions at Board retreats; and implementation of board assessment/self-evaluation tools.

3. Violations of Board Policy

- 3.1 President. If a board member acts contrary to these Operational Policies, the CMS President shall speak to the board member to seek an explanation and, when appropriate, advise the board member to refrain from such acts or omissions in the future.
- 3.2 Board Action. If the President is unable or it is inappropriate for the President to speak to the board member, the matter may be brought before the board of directors to discuss the matter with the board member to ensure that the conduct is not repeated.
- 3.3 Referral to House of Delegates. In situations in which a board member continues to violate these Operational Policies or in immediate extreme circumstances, the board may seek removal of the director by the House of Delegates in accordance with Article XII, Section 1 of the CMS Bylaws ("Recall").

4. Board Relationship with Staff

CMS and its Board of Directors understand that the Board is responsible for hiring and monitoring the performance of its Executive Director. The Executive Director is responsible for hiring and managing the CMS staff. Any concerns or issues with the performance of individual CMS staff members shall be brought to the attention of the Executive Director. Board members should not discipline or provide letters of reference for any individual staff member. All such matters are to be referred to the Executive Director. As one commentator put it, “the board governs...the staff manages.”

5. Provision of Services/Products by CMS to Local Societies

CMS recognizes that it may have opportunities to serve its component organizations by providing goods and services to such organizations. Such goods and services as well as any written materials related thereto are the intellectual property of CMS and CMS reserves the right to charge other entities or individuals for access to those goods and services as CMS may determine. Examples of such services include: meeting planning; billing; membership recruitment; accounting; marketing; phone answering; and negotiation of contracts. CMS should not engage in any advocacy or lobbying on behalf of such local organizations unless the CMS Board of Directors has authorized such activities. If there are any services which present a conflict of interest with CMS positions, activities or services, CMS shall not provide such services to the component organization. When fiscal circumstances permit, CMS should identify a separate staff person to coordinate such services.

6. Periodic Review of Policies

The CMS Board of Directors shall periodically review and, if necessary, revise these Operational Policies. Such review shall be conducted as determined by the Board from time to time.