



**CODE OF CONDUCT
for
BOARD & COMMITTEE
MEMBERS**

Preface

**These guidelines and protocols were adopted by Board on
4 September 2014**

Acknowledgement:

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SOUTHERN DHB GUIDELINES AND PROTOCOLS FOR BOARD AND COMMITTEE MEMBERS

- 1 CODE OF CONDUCT:** This Code of Conduct has been agreed to by all Board members of the Southern DHB Board. The Code sets out key principles that govern the conduct of Board members, both individually and collectively.

It should be noted that the DHB has a separate Code of Conduct policy for staff.

In developing the Code, Board members recognise the unique nature of the District Health Board, which embraces the disciplines and accountabilities expected of a corporate "board of directors", and the wider mandate of publicly elected board members. The principles in the Code endeavour to address potential differences in attitudes and behaviours of Board members. The Board is ultimately accountable for the successful performance of the DHB, and the actions of members, both public and private, should support the decisions and activities of the organisation.

Some sections of the Code are and may be further supported in time by organisation policies (e.g. Communications and Consultation Policies).

Board members should also be guided by the expectations outlined in their letter of appointment from the Minister of Health.

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- a) Fiduciary Responsibility** Each Board member has the duty to ensure that the District Health Board is properly governed. To meet this obligation, members must:
- Comply with the NZ Public Health and Disability Act 2000 (NZPH&DA) and the Crown Entities Act 2004 (CE Act);
 - Act with honesty and integrity;
 - Act in good faith and lay aside all private and personal interests in their collective decision-making;
 - Exercise reasonable care, diligence and skill at all times in carrying out their duties.

(Refer Crown Entities Act 2004, s 53-56)

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- b) Accountability** Members are accountable to the Minister of Health (through the Board Chair) for the performance of the DHB. The Minister, in turn, holds DHB Boards to account for engaging with their local communities.

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- c) Commitment** In accepting their positions, Board members have made a commitment to undertake the work of the Board, and to commit the time required to carry out these responsibilities. Members are expected to make every effort to attend scheduled meetings, but recognise that there will be occasional conflicts that require the

courtesy of notice of absence.

Members undertake to be diligent in preparing for and attending Board meetings. They will endeavour to be as informed and as knowledgeable as possible about the responsibilities of the District Health Board and the issues they are confronted with in order to arrive at the best decisions possible.

d) Training

Members are required to be familiar with: the obligations and duties of a member of a Board, Māori health issues, Treaty of Waitangi issues and Māori groups or organisations in the Otago and Southland districts, and are expected to avail themselves of opportunities for training in these areas. Training must be approved by the Minister of Health (NZPH&DA Schedule 3, Section 5(1)).

Training needs will be identified through Board evaluation processes and all training expenditure approved by the Board Chair and Chair of the Audit & Risk Committee.

Members have an obligation to assist the Board Secretary to maintain an up-to-date record of their training (Note: The NZPH&DA requires DHBs to maintain a training register for all members [Schedule 3, Section 5(2)])

**e) Collective
Responsibility**

The collective duties of the Board are set out in sections 49-51 and 58 of the Crown Entities Act 2004 and sections 26 and 27 of the NZ Public Health and Disability Act 2000.

Members recognise that there may at times be tension between the concepts of collective accountability of a Board of Directors and the expectations the public may have of individual members, especially when they are elected. Members agree to support and abide by the following principles:

- Members may clearly express their individual views at Board meetings, and endeavour to achieve a particular decision and course of action. However, members accept that once the Board has formally reached a decision, this decision becomes the policy of the Board.
 - It is inappropriate for a member to undermine a decision of the Board once made or to engage in any action or public debate that might frustrate its implementation.
 - Individual members will not attempt to re-litigate previous decisions at subsequent meetings of the Board, unless the majority of members agree to re-open the debate.
 - An individual member's personal actions should not bring the Board into disrepute or cause a loss of confidence in the activities and decisions of the Board.
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**f) Public
Statements**

Southern DHB has adopted a policy that no member of the Board or committee, or officer of the Board, will make any comment on an agenda item until after the Board or committee meeting is held.

All statements on behalf of the Board and/or relating to Board or Government policy are to be made by the Chair. Either the Board

Chair or the Chief Executive (or other senior staff under his or her delegation) will speak on operational matters. On occasions members may be asked their opinions and when talking to the media members should:

- Make clear the capacity in which they are speaking;
- Make it clear that they are expressing their own personal views and not speaking for the Board;
- Remember that they are representing the Government and Minister;
- Not make any promises in relation to funding or service provision;
- Not criticise any service provided by the DHB until such time as it has been formally raised with the Board;
- Be aware of the governance role, and that management is responsible for policy implementation and operational issues;
- Let the Board Chair know, in advance whenever possible, if they are contacted by or intend to speak to the media.

g) Clarity about Roles

Under section 26(3) of the NZPH&D Act, the Board must delegate to the Chief Executive the power to make decisions on management matters relating to the DHB on whatever terms and conditions it sees fit. To this end, the Board approve a Delegation of Authority Policy that is reviewed on an annual basis.

The Board is responsible for the governance of the DHB, and delegates to the Chief Executive responsibility for implementing the decisions of the Board, and the day to day management of the organisation. The Chief Executive is expected to provide the Board with relevant and appropriate information and with free and frank advice to assist it in reaching high quality decisions on strategy, policy and other governance matters.

Members recognise that, for the purposes of accountability, clarity between the roles of governance and management is essential. Members must take care to avoid becoming involved in management's activities and are prohibited from interference in matters involving individual staff members other than the Chief Executive (refer clause 44 of Schedule 3 of the NZPH&D Act).

Members will not make commitments for work or expenditure by the DHB that have not been previously approved by the DHB, nor create any obligation or liability for the DHB beyond authorised delegations.

h) Employment Relationship

The Board employs the Chief Executive who is responsible for the employment and management of all other staff in the organisation. Board members will:

- Be supportive of employees of the District Health Board, and will not criticise employees in public. Any concerns relating to staff will be raised with the Board Chair and/or Chief Executive, as appropriate;
- Exercise judgement and courtesy in respecting the protocol of communicating through the Chair and/or Chief Executive, (as appropriate), in raising matters with the Chief Executive and/or

senior staff;

- Not attempt to unduly influence any employee of the District Health Board to present material in a particular way that might affect the outcome of a decision to be made by the Board;
 - Exercise care in communicating privately with employees of the District Health Board, and refer any staff with complaints or concerns back to the Chief Executive.
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i) Contact with Individual Staff Members

In some circumstances it will be quite appropriate for members to communicate directly with individual staff to further their knowledge/ understanding of organisational issues relevant to their governance role. Such communication needs to be carried out in an open and considerate manner. As a general rule, requests to individual staff should be governed by the following protocols:

- In the first instance, such approaches should be made "through the management line", either via or with the knowledge of the Chief Executive (and Chair) and subsequently through the appropriate management levels (ie top down);
 - E-mails (or other written requests) and subsequent communication should be copied to the Chief Executive and Chair;
 - Consideration should be given to staff pressures and workloads and requests should not impose unreasonable burdens on staff;
 - Any concerns about responsiveness to Board member requests should be taken up directly with the Chair/Chief Executive.
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j) Procurement (Contact with Potential Service Providers and Staff Members)

As a public entity, the Board is required to be ethical and act with integrity when procuring goods or services. Informal communication with potential suppliers could prejudice the integrity of the procurement evaluation process (*Controller and Auditor General [2008], Procurement guidance for public entities: Good practice guide*). Board members will:

- Act, and be seen to be acting in a fair, open and unbiased manner;
 - Observe ethical standards, principles, and behaviour throughout the procurement process;
 - Not communicate informally with potential suppliers during a procurement process. If approached or lobbied, Board members will refer potential suppliers to the Chief Executive or the senior staff member under his or her delegation designated as the point of contact for a procurement process;
 - Not attempt to influence staff during a procurement process. This includes attempting to influence staff to use their delegated authority to purchase goods or services from a particular supplier.
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k) Complaints Procedures and Representations

Board members have an important role in providing a community voice to the activities of the DHB. However, members recognise that the organisation, through the mandate of the Board, has processes in place to seek public consultation, prioritise resources, establish waiting lists and times, and respond to consumer complaints etc.

- Members will advise residents/health consumers who desire personal matters to be brought to the attention of the DHB to follow the proper procedures for raising issues and registering complaints.
- Members will not advocate on behalf of an individual beyond advising them of the complaints procedures and checking that the matter has been addressed satisfactorily by the organisation. (Note: 'satisfactorily' refers to the procedures followed by the organisation in addressing the matter, not necessarily whether the outcome is as the individual would wish.)
- Note: the foregoing provisions do not preclude members pursuing in a general way issues relating to policy or systemic failure that may have been indicated by or arise from an individual case/complaint.

l) Confidentiality
(Duty not to disclose information)

Members receive information that is both public and private and must recognise that the release of information, and access to and handling of personal information about any individual, is governed by the Official Information Act 1982, the Privacy Act 1993 and the Health Information Privacy Code 1994. In order to protect the organisation from inappropriate use and disclosure of information:

- Members are expected to be familiar with this legislation, and refer any requests for 'Official Information' or information about individuals to the Chief Executive;
- Members will not disclose publicly any business discussed while the public is excluded from a meeting, and/or information for which good reason exists (under the terms of the Official Information Act) for it to be withheld from the public, unless the Board decides by resolution to make such information public;
- Members accept that they may acquire information of a confidential nature (for example about health and disability providers and/or other local and national organisations) and agree not to use any such information for personal advantage, nor to disclose it to any other person unless first authorised by the Board (*refer s 57 Crown Entities Act 2004*).

m) Conflict of Interest

Refer NZPH&D Act 2000: Section 6, Section 29(6), Schedule 2 Clause 6, Schedule 3 Clause 36, Schedule 4 Clause 38 and Section 31(1)(c) of the CE Act 2004.

The NZ Public Health and Disability Act and the CE Act provide the statutory framework for dealing with conflicts of interest and Board members duties generally. The NZPHD Act states that:

1. A Board member who is '*interested in a transaction*' of the District Health Board must, as soon as practicable, disclose the **nature** of the interest to the Board. This duty of disclosure is ongoing and is additional to any disclosures made at the time of election/appointment of the Board member. Some interests may only become apparent over time or as certain transactions arise, so members should supplement their standing disclosures with further disclosures as and when such interests become apparent. In addition, the 'nature' of the interest should be considered on a case by case basis with regard to the matters before the Board;

2. The disclosure must be recorded in the minutes and entered in a separate interests register;
3. The Board member interested in a transaction must not take part in any deliberation or decision of the Board relating to the transaction. The Board may, by majority, permit an interested member to take part in a deliberation (but not decision) of the Board

Definitions (NZPH&D Act Section 6)

A **“transaction”** in relation to a DHB, means:

- (a) the exercise or performance of a function, duty or power of the DHB; or
- (b) an arrangement, agreement, or contract to which the DHB is a party; or
- (c) a proposal that the DHB enter into an arrangement, agreement, or contract.

“Interest in a transaction” is defined as arising:

“if the Board member:

- (a) is a party to, or will derive a financial benefit from, the transaction;
- (b) has a financial interest in another party to the transaction; or
- (c) is a director, member, official, partner, or trustee of another party to, or person who will or may derive a financial benefit from, the transaction; or
- (d) is the parent, child, or spouse or partner of another party to, or person who will or may derive a financial benefit from the transaction; or
- (e) is otherwise directly or indirectly interested in the transaction.”

Paragraph (e) should be interpreted broadly. The Ministry of Health Conflict of Interest Guidelines for DHBs states that *“non-financial interests (and financial interests not caught by (a) to (d)) are included in (e), which should be interpreted broadly”*.

If a Board member’s interest can reasonably be regarded as likely to influence him or her in carrying out his or her responsibilities, then that member will be interested in that transaction.

Note:

A “perception” that a member is interested will not meet this test. However, a perception of a conflict of interest is still an important consideration for the DHB and needs to be managed by the Board. The best course, when there is any doubt, is to raise such matters of interest in the first instance with the Chair who will determine an appropriate course of action.

Intentionally failing to disclose an interest would be a breach of that Board member’s duties under the Crown Entities Act. Failure to declare an interest can undermine the validity of Board decisions and this can raise the risk that a decision may be challenged by way of judicial review. Ultimately, members who fail to declare an interest can be removed from office by the Minister of Health (s 9, sch 3 NZPH&DA & s 37 CEA).

Register of Interests:

A Register of Interests for all Board members is maintained by the Board Secretary and is published as part of the agenda for each Board meeting. This lists all the 'interests' of each member that might possibly give rise to a conflict situation during the course of members' duties.

Board members:

- Note that one of the most important things when dealing with interests and conflicts is openness and transparency;
- Will not use their official positions for personal gain, or solicit or accept gifts, rewards or benefits which might be perceived as inducements and which could compromise the Board's integrity;
- Will exercise care and judgement in accepting any gifts, and advise the Chair and/or Board of any received.

Under section 135 of the CE Act Board members are "officials" for the purposes of sections 105 and 105A of the Crimes Act 1961 relating to bribery and corruption:

"105(1) Every official is liable to imprisonment for a term not exceeding seven years who, whether within New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity. (2) Every one is liable to imprisonment for a term not exceeding seven years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by him in his official capacity.

105A Every official is liable to imprisonment for a term not exceeding seven years who, whether within New Zealand or elsewhere, corruptly uses or discloses any information, acquired by him in his official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or any other person."

Collective Responsibility for Managing Conflicts of Interest:

The Board is responsible for ensuring that any conflicts which arise are managed appropriately to adequately avoid or mitigate the effects of the conflict of interest.

- "The successful management of conflicts requires active management. There needs to be a genuine consideration of the conflict and its impact so that appropriate action can be taken" (Ministry of Health, 2007).
- Members should not hesitate to question in detail other members about their conflicts of interest. Members should raise the issue of conflicts during meetings where they feel another member's proper participation could be compromised by their conflicts (Ministry of Health, 2007).
- "A conflict of interest remains a conflict of interest even if disclosed, or approved, pursuant to cl 36. In other words, even if a conflict of interest has been dealt with in terms of cl 36 it can

still, for administrative law purposes, be impermissible if it amounts to procedural unfairness or impropriety" (*DML: Justice Asher at paragraph 134*).

- The Board must be prepared, where appropriate, to exclude Board Members from involvement with a transaction, or to cancel a procurement or other process, where that is necessary to ensure a fair and proper process (Ministry of Health, 2007).

References:

- Controller and Auditor General (2007), *Managing conflicts of interest: Guidance for public entities: Good practice guide*.
- Letter to Board Members from Deputy Director-General, DHB Funding & Performance, Ministry of Health (1 June 2007) re *Conflicts of Interest and the duty not to disclose information*.
- Ministry of Health (2010), *Conflict of Interest Guidelines for District Health Boards*.

n) Members undertaking work for the DHB

Clause 7 of Schedule 2 of the NZPH&D Act provides that employees of the DHB may also be elected members. Employment relationships will be declared as a conflict of interest (see section 6 NZPH&D Act).

For consultancy work, paragraph 113 of the Fees Framework [CO(12)06] applies:

"The practice of members or other appointees receiving payments as consultants from bodies to which they are appointed must not take place. If, however, the responsible Minister agrees that there are overriding reasons for members and other appointees to carry out consulting assignments, any proposal to do so should be submitted to APH (Appointments and Honours Committee) and Cabinet for consideration. Where the arrangement results in the risk of a conflict of interest, the Minister should identify the conflict in the submission to the APH, and propose a suitable regime for managing the conflict."

In the event of any such approval, the Minister will specify any conditions or expectations that will apply to the consultancy relationship.

o) Consultation and Participation

The Board has legislative obligations to engage with the community to foster community participation in health improvement, and in planning for the provision of services and for significant changes to the provision of services. It has a special responsibility to establish and maintain processes to enable Māori to participate in, and contribute to, strategies for Māori health improvement.

When it is required, all of a DHB's service change proposals must adhere to the Planning Regulations. Where the Minister directs DHBs to make significant changes, the Minister may also require DHBs to consult on how those changes should be made. (Note, 'consultation' is a term with specific meaning that has been derived from case law. All DHBs are required to consult to the standard defined in the Local Government Act 2002.)

The Board and individual members:

- Will endeavour to keep an open mind during formal consultation with the public and be prepared to listen, to develop their individual and collective understanding, and if appropriate to change their views;
- Will ensure that the consultation process provides the public with an effective opportunity to give their views;
- Will be respectful and attentive to members of the public;
- Note the Court of Appeal's view of consultation as outlined in its decision in *Wellington International Airport v Air New Zealand Limited*:

"Consultation does not mean negotiation or agreement. It means setting out a proposal not finally decided upon, adequately informing a party of relevant information upon which the proposal is based, listening to what others have to say with an open mind (in that there is room to be persuaded against the proposal), undertaking that task in a genuine and not cosmetic manner, reaching a decision that may or may not alter the original proposal."

p) Requests for Items to be Placed on Board or Committee Agendas

Members may seek the inclusion of items on Board or committee agendas through the following mechanisms:

1. Requesting a matter to be discussed through the Chair.
2. Through a Notice of Motion:

Notices of motion shall be in writing signed by the mover, stating the meeting at which it is proposed that the notice of motion be considered, and shall be delivered to the Chief Executive Officer at least 5 clear days before such meeting.

The Chair may direct the Chief Executive Officer to refuse to accept any notice of motion which is:

- (a) Disrespectful or which contains offensive language or statements made with malice; or
- (b) Not within the scope of the role or functions of the board; or
- (c) Contains an ambiguity or a statement of fact or opinion which cannot properly form part of an effective resolution, and where the mover has declined to comply with such requirements as the Chief Executive Officer may make.

No notice of motion shall proceed in the absence of the mover, unless moved by another member authorised in writing by the mover to do so.

Any notice of motion referring to any matter ordinarily dealt with by a committee of the Board may be referred by the Chief Executive Officer to that committee.

3. For **urgent** matters, through the provision for discussion of extraordinary business at ordinary meetings, as follows:

Where an item is not on the agenda for a meeting, that item may be dealt with if -

- (a) The board or committee by resolution so decides; and*
- (b) The Chairperson explains at the meeting at a time when it is*

open to the public -

(i) The reason why the item is not on the agenda; and

(ii) The reason why the discussion of the item cannot be delayed until a subsequent meeting.

(s 28, Schedule 3 and s 30, Schedule 4, of the NZPH&DA apply.)

q) Behaviour at Board and Committee Meetings

Southern DHB also has Standing Orders.

As a general practice members have agreed that meetings of the Board and committees should be conducted in as informal manner as possible. In order to achieve this and to make meetings as productive and efficient as possible, members undertake to observe the following protocols (in addition to Standing Orders):

- Members will behave in a polite and respectful manner with colleagues and the executive.
- Issues will be raised in an objective manner – no personal reference or innuendo will be made to any persons associated with the matter being raised.
- Members will not interrupt each other or talk while another member is speaking (ie no side discussions will be held).
- Members will only make a point if it has not already been raised and is relevant to the topic.
- Members will endeavour to achieve closure on one point before another point is raised.
- Members, the Chair and the Chief Executive will endeavour to clarify questions, issues, requests, before taking actions or responding.
- When there are concerns about matters that may be based on rumour or that are controversial, sensitive or political in nature, members will check with the Board Chair or Chief Executive for understanding and clarification.
- The Chair will terminate discussions if information is not available to pursue the discussion.
- Except for emergencies, or with the Chair's permission, no cell-phones will be turned on during Board meetings.
- Members will act consistently with what is agreed, demonstrating collective responsibility.
- Members and management participating in meetings will signal their intention to leave the meeting and such departures will only be made with good reason.
- All members will assist the Chair to uphold the behaviour protocols agreed to by the Board and to challenge departures from agreed values and standards.

r) Election Period Behaviour

Board members will abide by State Services Commission and Ministry of Health guidelines on conduct during election periods.
