



Albert Einstein College of Medicine

# Conflict of Interest Policy for Trustees, Officers and Key Employees

## Article I Purpose

The purpose of this conflict of interest policy (the “Policy”) is to protect the interests of Albert Einstein College of Medicine, Inc. (the “Corporation”) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a trustee, officer or key employee of the Corporation or might result in a possible “excess benefit transaction,” as defined in Section 4958 of the Internal Revenue Code of 1986, as amended (the “Code”). This Policy is intended to implement and supplement but not replace any applicable state and federal laws governing conflicts of interest applicable to nonprofit and tax-exempt organizations.

## Article II Definitions

### 1. Interested Person

Any of the Corporation’s trustees, officers, members of a committee with board-delegated powers or Key Employees (as defined below) who has a direct or indirect Financial Interest, as defined below, is an “Interested Person.”

### 2. Financial Interest

A person has a “Financial Interest” if the person has, directly or indirectly, through business, investment, or through a Relative:

- a. An ownership or investment interest in any entity with which the Corporation has a transaction or arrangement,
- b. A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A Financial Interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a Financial Interest may have a conflict of interest only if the governing board or appropriate committee decides that a conflict of interest exists.

### **3. Conflict of Interest**

A conflict of interest arises whenever the interests of the Corporation come into conflict with a Financial Interest of an Interested Person, or otherwise whenever an Interested Person's personal or Financial Interest could be reasonably viewed as affecting his/her objectivity or independence in fulfilling his/her duties to the Corporation.

### **4. Related Party Transaction**

A Related Party Transaction shall mean any transaction, agreement or any other arrangement in which a Related Party (as defined below) has a Financial Interest and in which the Corporation or any Affiliate (as defined below) of the Corporation is a participant.

### **5. Related Party**

A Related Party shall mean (i) any trustee, officer, or Key Employee of the Corporation or any Affiliate of the Corporation; (ii) any Relative (as defined below) of any trustee, officer or Key Employee of the Corporation or any Affiliate of the Corporation; or (iii) any entity which any individual described in clauses (i) and (ii) of this subparagraph has a thirty-five percent (35%) or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent (5%).

### **6. Relative**

A Relative of an individual trustee, officer, member of a committee with board-delegated powers or Key Employee shall mean his or her (i) spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, and great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren; or (ii) domestic partner (as defined in Section twenty-nine hundred ninety-four-a of the New York Public Health Law).

### **7. Affiliate**

An Affiliate of the Corporation shall mean any entity controlled by, in control of, or under common control with the Corporation.

### **8. Key Employee**

A Key Employee shall mean any person who is in a position to exercise substantial influence over the affairs of the Corporation, as referenced in 26 USC §4958(f)(1)(A) and further specified in 26 C.F.R. §§53.4958-3(c)-(e) or succeeding provisions.

## **Article III Procedures**

### **1. Duty to Disclose**

In connection with any actual or possible conflict of interest or Related Party Transaction, an Interested Person must disclose the existence of the Financial Interest and be given the opportunity to disclose all material facts to the Corporation's governing board or to a duly authorized committee of the governing board considering the proposed transaction or arrangement, including any transaction with a Related Party.

### **2. Determining Whether a Conflict of Interest Exists**

After disclosure of the Financial Interest and all material facts, and after any discussion with the Interested Person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining governing board or committee members shall decide if a conflict of interest exists.

### **3. Procedures for Addressing a Conflict of Interest**

- a. An Interested Person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest. An Interested Person shall not influence or attempt to influence deliberation or voting by the governing board or any committee thereof with respect to the matter giving rise to the Interested Person's conflict of interest. The body that considers the proposed transaction or arrangement shall be composed entirely of individuals without a conflict of interest with respect to the proposed transaction or arrangement.
- b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested trustees whether the transaction or arrangement is in the Corporation's best interest, for its own benefit, and whether it is fair and reasonable. The governing board or committee's deliberations should include an analysis of comparable transactions or arrangements. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

#### **4. Procedures for Related Party Transactions**

- a. The Corporation shall not enter into a Related Party Transaction unless the transaction is determined by the governing board of the Corporation to be fair, reasonable and in the Corporation's best interest at the time of such determination.
- b. Any trustee, officer or Key Employee who has an interest in a Related Party Transaction shall disclose in good faith to the governing board, or authorized committee thereof, the material facts concerning such interest.
- c. With respect to any Related Party Transaction, the governing board of the Corporation, or a duly authorized committee thereof, shall: (i) prior to entering into the transaction, consider alternative transactions to the extent available; (ii) approve the transaction by not less than a majority vote of the governing board or committee members present at the meeting; and (iii) contemporaneously document in writing the basis for the governing board or committee's approval, including its consideration of any alternative transactions.
- d. A Related Party shall not participate in deliberations or voting relating to a Related Party Transaction with respect to the Related Party; provided, however, that the governing board or committee may request that a Related Party present information concerning a Related Party Transaction at a governing board or committee meeting prior to the commencement of deliberations or voting related thereto.

#### **5. Violations of the Conflicts of Interest Policy**

- a. If the governing board or committee has reasonable cause to believe an Interested Person has failed to disclose an actual or possible Financial Interest, it shall inform the Interested Person of the basis for such belief and afford the Interested Person an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the Interested Person's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the Interested Person has failed to disclose an actual or possible Financial Interest, it shall take appropriate disciplinary and corrective action.

#### **6. Administration**

To the extent that the Corporation is subject to the audit oversight requirements of the New York Not-for-Profit Corporation Law, the governing board of the Corporation, the audit committee thereof, or another duly authorized committee thereof comprised solely of "independent directors" as defined under the New York Not-for-Profit Corporation Law shall oversee the adoption, implementation of and compliance with this Policy and shall ensure the Corporation's compliance with the provisions of such Law pertaining to conflict of interest policies and Related Party Transactions.

**Article IV  
Records of Proceedings**

The minutes of the governing board and all committees with board-delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible conflict of interest, the nature of the Financial Interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, the terms of the transaction or arrangement and the date it was approved, any action taken with respect consideration of the transaction or arrangement by any member of the governing board or committee with a conflict of interest, and a record of any votes taken in connection with the proceedings.

**Article V  
Compensation**

- a. A voting member of the governing board who receives compensation, directly or indirectly, from the Corporation for services is precluded from being present at or otherwise participating in any governing board or committee deliberation or vote pertaining to that member's compensation; provided, however, that the governing board or authorized committee may request that such member present information as background or answer questions at a governing board or committee meeting prior to the commencement of deliberations or voting relating thereto.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from being present at or otherwise participating in any committee deliberation or vote pertaining to that member's compensation; provided, however, that the authorized committee may request that such member present information as background or answer questions at a committee meeting prior to the commencement of deliberations or voting relating thereto.
- c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

**Article VI  
Annual Statements**

Each trustee, officer and member of a committee with governing board-delegated powers shall, prior to his/her initial election and annually thereafter, sign and submit to the Secretary of the Corporation a statement which affirms that such person:

- a. Has received a copy of this Policy,
- b. Has read and understands this Policy,
- c. Has agreed to comply with this Policy, and
- d. Understands that the Corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

In addition, such statement shall identify, to the best of the individual's knowledge, any entity of which such individual is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the Corporation has a relationship and any transaction in which the Corporation is a participant and in which the individual might have a conflicting interest.

The Secretary of the Corporation shall provide a copy of all completed statements to the President of the governing board, Audit Committee, or other duly authorized board committee described in Section 6 of Article III of this Policy.

### **Article VII Periodic Reviews**

To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further the Corporation's charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.
- c. Each trustee, officer and member of a committee with governing board-delegated powers shall annually complete a disclosure form identifying any relationships, positions or circumstances that could give rise to or otherwise contribute to an actual or possible conflict of interest.

### **Article VIII Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

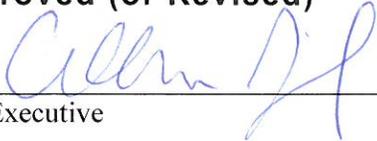
#### **I. Effective Date**

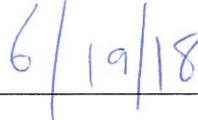
Effective as of: 1 March 2018

**II. Policy Management and Responsibilities**

The Responsible Office under this policy is the Office of General Counsel. The Responsible Executive and the Responsible Officer under this policy are respectively, the College's Dean and the Senior Counsel.

**III. Approved (or Revised)**

 \_\_\_\_\_  
Responsible Executive

 \_\_\_\_\_  
Date

Initially approved by the Board of Trustees of Albert Einstein College of Medicine, Inc., on March 13, 2015.