



The Office of
Minnesota Attorney General Keith Ellison
helping people afford their lives and live with dignity, safety, and respect • www.ag.state.mn.us

CONFLICTS OF INTEREST & PROPRIETARY AND TRADE SECRET INFORMATION POLICIES

Minnesota Prescription Drug Affordability Board

May 13, 2025

Deputy Attorney General James Canaday • james.canaday@ag.state.mn.us



Agenda

- Brief recap of both draft policies
- Sampling of public comments
- Opportunity for brief “structured conversation” of the board using issues already identified in comments
- Next steps



Summary: Conflicts of Interest Policy

- Draft policy presented at **June 20, 2024 meeting**
- **Three** separate but related policies:
 - Board Members
 - Board Staff
 - Third-Party Contractors
- Scope of draft policy:
 - Purpose
 - Statutory Provisions
 - Procedures for Identifying and Managing Potential Conflicts of Interest
 - Board's Oversight Role as to Employees and Contractors
 - Annual Review and Training

DRAFT/For Discussion		v.1	June 20, 2024
Page *			
Minnesota Prescription Drug Affordability Board			
Title:	Conflicts of Interest; Board Members		Policy No.: 01-A
Date Issued:	(pending)		
Dates Reviewed:	(none)		
Amendments Approved:	(none)		

I. Purpose

The Minnesota Prescription Drug Affordability Board ("Board") was established "to protect consumers, state and local governments, health plan companies, providers, pharmacies, and other health care system stakeholders from unaffordable costs of certain prescription drugs." Minn. Stat. § 62J.87, subd. 1 (2023). The Board seeks to ensure that it conducts its business for the benefit of the public in a manner that instills public confidence in its actions and in the absence of improper financial or personal associations.

Therefore, the Board adopts this policy to govern the conduct of its members during their terms of office.

II. Statutory Provisions

Board members shall follow all statutory provisions regarding conflicts of interest and shall annually confirm such compliance.

Manufacturer or PBM Affiliation. Membership of the Board, including both voting members and nonvoting members, is governed by section 62J.87. *Id.*, subd. 2(a). "A member must not be an employee of, a board member of, or a consultant to a manufacturer or trade association for manufacturers, or a pharmacy benefit manager or trade association for pharmacy benefit managers." *Id.*, subd. 2(b); see also Minn. Stat. § 62J.86, subd. 9 (2023) (defining "manufacturer").

Board Conflicts of Interest Statute. Section 62J.89 provides as follows:

Subdivision 1. **Definition.**

For purposes of this section, "conflict of interest" means a financial or personal association that has the potential to bias or have the appearance of biasing a person's decisions in matters related to the board, the advisory council, or in the conduct of the board's or council's activities. A conflict of interest includes any instance in which a person, a person's immediate family member, including a spouse, parent, child, or other legal dependent, or an in-law of any of the preceding individuals, has received or could receive a direct or indirect financial benefit of any amount deriving from the result or findings of a decision or determination of the board. For purposes of this section, a financial benefit includes honoraria, fees, stock, the value of the member's, immediate family member's, or in-law's stock holdings, and any direct financial benefit deriving

003



Public Comments: Conflicts of Interest Policy

- Defining the **Scope** of Potential Conflict-of-Interest Relationships
 - “relationships that constitute a conflict of interest in Board proceedings **go beyond just relationships with manufacturers and pharmacy benefit managers (“PBMs”)** . . . [and] the Board [should] be mindful of the broad universe of possible conflicts of interest that should be monitored and precluded, including **relationships with other stakeholders in the pharmaceutical drug supply chain.**”
 - Minn. Stat. § 62J.87, subd. 2(a): prohibition on board members with a relationship with manufacturers, PBMs, or trade associations.
- Duty to **Investigate** Potential Conflicts of Interest
 - What duty, if any, does a board member have to actively investigate which medications their family members are taking, which stocks or securities their family members own, or which clients their family members serve in their employment or professional capacity?



Minn. Stat. § 62J.89

1

MINNESOTA STATUTES 2024

62J.89

62J.89 CONFLICTS OF INTEREST.

Subdivision 1. **Definition.** For purposes of this section, "conflict of interest" means a financial or personal association that has the potential to bias or have the appearance of biasing a person's decisions in matters related to the board, the advisory council, or in the conduct of the board's or council's activities. A conflict of interest includes any instance in which a person, a person's immediate family member, including a spouse, parent, child, or other legal dependent, or an in-law of any of the preceding individuals, has received or could receive a direct or indirect financial benefit of any amount deriving from the result or findings of a decision or determination of the board. For purposes of this section, a financial benefit includes honoraria, fees, stock, the value of the member's, immediate family member's, or in-law's stock holdings, and any direct financial benefit deriving from the finding of a review conducted under sections 62J.85 to 62J.95. Ownership of securities is not a conflict of interest if the securities are: (1) part of a diversified mutual or exchange traded fund; or (2) in a tax-deferred or tax-exempt retirement account that is administered by an independent trustee.

Subd. 2. **General.** (a) Prior to the acceptance of an appointment or employment, or prior to entering into a contractual agreement, a board or advisory council member, board staff member, or third-party contractor must disclose to the appointing authority or the board any conflicts of interest. The information disclosed must include the type, nature, and magnitude of the interests involved.

(b) A board member, board staff member, or third-party contractor with a conflict of interest with regard to any prescription drug product under review must recuse themselves from any discussion, review, decision, or determination made by the board relating to the prescription drug product.

(c) Any conflict of interest must be disclosed in advance of the first meeting after the conflict is identified or within five days after the conflict is identified, whichever is earlier.

Subd. 3. **Prohibitions.** Board members, board staff, or third-party contractors are prohibited from accepting gifts, bequeaths, or donations of services or property that raise the specter of a conflict of interest or have the appearance of injecting bias into the activities of the board.

History: 2023 c 57 art 2 s 32



Summary: Proprietary and Trade Secret Information Policy

- Draft policy presented at **June 20, 2024 meeting**
- Current draft is one policy that applies to board members, employees, and contractors, but may revisit structure as drafting continues.
- Scope of draft policy:
 - Purpose
 - Statutory Provisions
 - Procedures for Protection of Proprietary and Trade Secret Data
 - Procedures for Challenges to Claims of Proprietary and Trade Secret Protections
 - Board's Oversight Role as to Employees and Contractors
 - Annual Review and Training

DRAFT/For Discussion		v.1	June 20, 2024
Page *			
Minnesota Prescription Drug Affordability Board			
Title:	Proprietary and Trade Secret Information; Confidentiality Policy No.: 02		
Date Issued:	(pending)		
Dates Reviewed:	(none)		
Amendments Approved:	(none)		

I. Purpose

The Minnesota Prescription Drug Affordability Board ("Board") was established "to protect consumers, state and local governments, health plan companies, providers, pharmacies, and other health care system stakeholders from unaffordable costs of certain prescription drugs." Minn. Stat. § 62J.87, subd. 1 (2023). Information submitted to the Board regarding prescription drugs is generally public, but the Board is authorized to protect bona fide trade secret and otherwise proprietary or nonpublic information from public release under certain circumstances.

Therefore, the Board adopts this policy to establish procedures for the protection and use of such information and to resolve disputes about data classifications.

II. Statutory Provisions

The Board's statutory authority provides as follows related to proprietary and trade secret information and confidentiality:

62J.87 PRESCRIPTION DRUG AFFORDABILITY BOARD.

Subd. 7. Meetings. (a)

The board may meet in closed session when reviewing proprietary information, as determined under the standards developed in accordance with section 62J.91, subdivision 3.

62J.90 PRESCRIPTION DRUG PRICE INFORMATION; DECISION TO CONDUCT COST REVIEW.

003



Public Comments: Proprietary and Trade Secret Information Policy

- Request for clarification that the board **must meet in closed session** when reviewing proprietary information.
 - Minn. Stat. § 62J.87, subd. 7: “The board *may* meet in closed session when reviewing proprietary information....”
- Request for implementation of “**robust storage and access controls and safeguards** to protect the confidentiality of sensitive information.”
- Request for clarification that submitting parties may designate material as trade secret, confidential, or proprietary information, **even if the information belongs to a third party**.
- Request for clarification on **board procedures for evaluation** of materials for potential trade secret, confidential, or proprietary information submitted by a party that may belong to a third party to ensure adequate protection even if not designated as confidential upon submission.



Next Steps

- Call for further comments from the board and the public
- Next steps: revised policies for consideration at upcoming meeting

My contact information:



James W. Canaday *(he/him/his)*

Deputy Attorney General | Consumer Protection Section

Office of the Minnesota Attorney General

445 Minnesota Street, Suite 600, Saint Paul, MN 55101

Office: 651-757-1421 | Mobile: 651-247-2152 | Website: ag.state.mn.us

Helping people afford their lives and live with dignity, safety, and respect