

# **ODYSSEY HEALTHCARE, INC.**

## **CORPORATE GOVERNANCE GUIDELINES**

**May 20, 2008**

### **1. Director Qualification Standards**

The Board of Directors (the “Board”) of Odyssey HealthCare, Inc. (the “Company”) will have a majority of directors who meet the criteria for independence required by the NASDAQ Stock Market. The Nominating & Governance Committee is responsible for establishing criteria for selecting new directors and actively seeking individuals to become board members for recommendation to the Board. This assessment will include consideration of diversity, skills, and experience in the context of the needs of the Board, as well as members’ qualification as independent. Nominees for directorship will be selected by the Nominating & Governance Committee in accordance with the policies and principles in its charter. The invitation to join the Board should be extended by the Board itself, by the Chairman of the Nominating & Governance Committee and the Chairman of the Board.

The Board presently has nine (9) members. The number of directors which shall constitute the whole Board of Directors shall be fixed from time to time by a majority of the directors then in office, but in any event shall not be less than one. The Nominating & Governance Committee is responsible for reviewing, on an annual basis, the advisability or need for any change in the number and composition of the Board.

No director may serve on more than three other public company boards; provided, however, that the Board may waive this limitation if the Board determines that such waiver is in the best interest of the Company. Directors should advise the Chairman of the Board and the Chairman of the Nominating & Governance Committee in advance of accepting an invitation to serve on another public company board.

The Board does not believe it should establish term limits. While term limits could help ensure that there are fresh ideas and viewpoints available to the Board, they hold the disadvantage of losing the contribution of directors who have been able to develop, over a period of time, increasing insight into the Company and its operations and, therefore, provide an increasing contribution to the Board as a whole. As an alternative to term limits, the Nominating & Governance Committee will review each director’s continuation on the Board every three years. This will allow each director the opportunity to conveniently confirm his or her desire to continue as a member of the Board.

### **2. Election of Directors**

The Company’s Bylaws provide that, in the case of uncontested elections (i.e., those where the number of nominees is the same as the number of directors to be elected), directors are elected by the vote of a majority of the shares represented and entitled to vote. Any nominee for director who fails to receive the requisite majority vote at an annual meeting held for the purpose of electing directors where the election is uncontested must, promptly following

certification of the stockholder vote, tender his or her resignation to the Board. The independent directors (excluding the director who tendered the resignation) will evaluate any such resignation in light of the best interests of the Company and its stockholders in determining whether to accept or reject the resignation, or whether other action should be taken. In reaching its decision, the Board may consider any factors it deems relevant, including the director's qualifications, the director's past and expected future contributions to the Company, the overall composition of the Board and whether accepting the tendered resignation would cause the Company to fail to meet any applicable rule or regulation (including NASDAQ listing requirements and federal securities laws). The Board will act on the tendered resignation, and publicly disclose its decision and rationale, within 90 days following certification of the stockholder vote.

Director nominees will annually submit a contingent resignation in writing to the Chairman of the Nominating & Governance Committee to address majority voting in director elections. The resignation becomes effective only if the director fails to receive a sufficient number of votes for re-election at the Annual Meeting and the Board accepts such resignation.

### **3. Director Responsibilities**

The basic responsibility of the directors is to exercise their business judgment to act in what they reasonably believe to be in the best interests of the Company and its shareholders. In discharging that obligation, directors should be entitled to rely on the honesty and integrity of the Company's senior executives and its outside advisors and auditors. The directors shall also be entitled to (i) have the Company purchase reasonable directors' and officers' liability insurance on their behalf, (ii) the benefits of indemnification to the fullest extent permitted by law and the Company's certificate of incorporation, bylaws and any indemnification agreements, and (iii) exculpation as provided by state law and the Company's certificate of incorporation.

Directors are expected to attend Board meetings and meetings of committees on which they serve, and to spend the time needed and meet as frequently as necessary to properly discharge their responsibilities. Information and data that are important to the Board's understanding of the business to be conducted at a Board or committee meeting should generally be distributed in writing to the directors before the meeting, and directors should review these materials in advance of the meeting. Attendance at Board and committee meetings shall be considered by the Nominating & Governance Committee in assessing each Board member's performance.

The Board has no policy with respect to the separation of the offices of Chairman and the Chief Executive Officer. The Board believes that this issue is part of the succession planning process and that it is in the best interests of the Company for the Board to make a determination regarding this issue each time it elects a new chief executive officer.

The Chairman will establish the agenda for each Board meeting. Each Board member is free to suggest the inclusion of items on the agenda. Each Board member is free to raise at any Board meeting subjects that are not on the agenda for that meeting. The Board will review the Company's long-term strategic plans and the principal issues that the Company will face in the future during at least one Board meeting each year.

The non-management directors will meet in executive session at least quarterly. The director who presides at these meetings will be the Chairman of the Nominating & Governance Committee, which is comprised solely of non-management directors.

The Board believes that management speaks for the Company. Individual Board members may, from time to time, meet or otherwise communicate with various external constituencies that are involved with the Company. It is expected, however, that Board members would do this with the knowledge of the management and, absent highly unusual circumstances (e.g., communications in response to allegations of criminal or fraudulent management acts) or except as contemplated by the committee charters, only at the request of management.

#### **4. Board Committees**

The Board will have at all times an Audit Committee, a Compensation Committee and a Nominating & Governance Committee. All of the members of these committees will be independent directors under the criteria established by the NASDAQ Stock Market. Committee members will be appointed by the Board upon recommendation of the Nominating & Governance Committee, in accordance with all other such criteria as may be established by the NASDAQ Stock Market from time to time, with consideration given to the desires of individual directors.

Each committee will have its own charter. The charters will set forth the purposes, goals and responsibilities of the committees as well as qualifications for committee membership, procedures for committee member appointment and removal, committee structure and operations and committee reporting to the Board. The charters will also provide that each committee will annually evaluate its performance.

The Chairman of each committee, in consultation with the committee members, will determine the frequency and length of the committee meetings consistent with any requirements set forth in the committee's charter. The Chairman of each committee, in consultation with the appropriate members of the committee and management, will develop the committee's agenda. The schedule for each committee will be furnished to all directors.

The Board may, from time to time, establish or maintain additional committees as necessary or appropriate.

#### **5. Director Access to Management and Independent Advisors**

The Board and each committee have the power to hire independent legal, financial or other advisors as they may deem necessary, without consulting or obtaining the approval of any officer of the Company in advance, to approve the fees and expenses of those advisors, and to cause the Company to pay the fees and expenses of those advisors.

Directors have full and free access to officers and employees of the Company. Any meetings or contacts that a director wishes to initiate may be arranged through the CEO or the Secretary or directly by the director. The directors will use their judgment to ensure that any such contact is not disruptive to the business operations of the Company and will, to the extent

not inappropriate, copy the CEO on any written communications between a director and an officer or employee of the Company.

The Board welcomes regular attendance at each Board meeting of senior executive officers of the Company. If the CEO wishes to have additional Company personnel attendees on a regular basis, this suggestion should be brought to the Board for approval.

## **6. Director Compensation**

The Compensation Committee will make a recommendation to the Board regarding the form and amount of director compensation in accordance with the policies and principles set forth in its charter, and the Compensation Committee will conduct an annual review of director compensation. The Compensation Committee will consider that directors' independence may be jeopardized if director compensation and perquisites exceed customary levels, if the Company makes substantial charitable contributions to organizations with which a director is affiliated, or if the Company enters into consulting contracts with (or provides other indirect forms of compensation to) a director or an organization with which the director is affiliated.

## **7. Director Orientation and Continuing Education**

All new directors must participate in the Company's Orientation Program, which should be conducted within two months of the annual meeting at which new directors are elected. This orientation will include presentations by senior management to familiarize new directors with the Company's strategic plans, its significant financial, accounting and risk management issues, its compliance programs, its Corporate Code of Business Conduct and Ethics and Financial Code of Ethics, its principal officers, and its internal and independent auditors. In addition, the Orientation Program will include visits to Company headquarters. All other directors are also invited to attend the Orientation Program.

## **8. CEO Evaluation and Management Succession**

The Compensation Committee will annually review and approve corporate goals and objectives relevant to the compensation of the CEO, evaluate the performance of the CEO in light of those goals and objectives and set the compensation of the CEO based on this evaluation.

At least annually, the Board shall review and approve the CEO succession plan prepared by the Nominating & Governance Committee and review the advisability or need for any changes thereto. The Nominating & Governance Committee should make an annual report to the Board on succession planning. The entire Board will work with the Nominating & Governance Committee to evaluate potential successors to the CEO. The CEO should at all times make available his or her recommendations and evaluations of potential successors, along with a review of any development plans recommended for such individuals.

## **9. Annual Performance Evaluation of the Board**

The Board will conduct an annual self-evaluation to determine whether it and its committees are functioning effectively. The Nominating & Governance Committee will receive

comments from all directors and report annually to the Board with an assessment of the Board's performance. This will be discussed with the full Board following the end of each fiscal year. The assessment will focus on the Board's contribution to the Company and specifically focus on areas in which the Board or management believes that the Board could improve.

## **10. Amendments**

Any amendment to these Guidelines shall be made only by the Board or the Nominating & Governance Committee of the Board. If an amendment to these Guidelines is made, appropriate disclosure will be made within two business days after such amendment has been made in accordance with applicable legal requirements and stock exchange regulations.