

## **CODE OF BUSINESS CONDUCT AND ETHICS** (as amended through March 7, 2008)

### **Introduction — General Statement of Company Policy.**

Depomed, Inc. (the “Company”) requires lawful and ethical behavior at all times. The purpose of this Code of Business Conduct and Ethics (“Code of Conduct”) is to provide you with a statement of certain key policies and procedures of the Company for you to follow in conducting business in a legally and ethically appropriate manner. This Code of Conduct is intended as one element in the Company’s efforts to ensure lawful and ethical conduct on the part of you and the Company. This Code of Conduct is part of a larger process that includes compliance with the corporate policies themselves, an open relationship between you and your supervisors that is conducive to good business conduct and, above all, your integrity and good judgment.

In that regard, you must:

- comply with applicable laws, rules, and regulations;
- conduct all dealings with patients, medical professionals, and the Company’s customers, suppliers and competitors fairly, honestly and with integrity;
- ethically handle conflicts of interest, both real and perceived, in personal and professional relationships;
- produce, or cause to be produced, full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with or submits to the Securities and Exchange Commission and in other public communications;
- protect information, in any form, that belongs to the Company, its customers and suppliers;
- protect the Company’s assets and ensure their efficient use and report any suspected incident of fraud or theft immediately; and
- never use your position with the Company or Company assets or information for improper personal gain.

This Code of Conduct includes some general principles. You will have to apply these principles to your own specific responsibilities. If you have any questions about the proper application of the principles or about what is required by the law in any given situation, you must consult with the Company’s Chief Compliance Officer (the “Compliance Officer”). As of March 2008, the Compliance Officer is the Company’s General Counsel.

If you violate this Code of Conduct, you will be subject to disciplinary action, up to and including immediate termination of your employment. You must report potential or actual violations of this Code of Conduct to your immediate supervisor, or, alternatively, to the Compliance Officer or the Chairman of the Company's Audit Committee. The Company has implemented procedures for reporting violations of law or this Code of Conduct, including procedures that provide for anonymous reporting of violations.

Under no circumstances will you be subject to any disciplinary or retaliatory action for reporting a violation or potential violation, unless it is your own. However, making known false or malicious reports will not be tolerated, and you will be subject to appropriate disciplinary action if you file such reports.

No representation is expressed or implied that the policies stated in this Code of Conduct are all of the Company's relevant policies, or that they are a comprehensive, full or complete explanation of the laws or standards of conduct that are applicable to you or the Company. You have a continuing obligation to familiarize yourself with applicable law and Company policy.

You must sign a certification in the attached form acknowledging receipt of this Code of Conduct. This Code of Conduct and related reporting procedures are available in the Company's Handbook/Policy Manual, which is posted on the Company's intranet. This Code of Conduct is also available to the public on the Company's website at [www.depomed.com](http://www.depomed.com).

Investors and others unaffiliated with the Company who wish to report potential or actual violations of law or this Code of Conduct may do so by writing to the Chief Compliance Officer at the following address: Depomed, Inc., Attention: Chief Compliance Officer, 1360 O'Brien Drive, Menlo Park, CA 94025. All letters received will be categorized, processed, and routed to the appropriate Company personnel by the Chief Compliance Officer. Comments or questions regarding the Company's accounting, internal controls or auditing matters will be referred to members of the Audit Committee. At their option, investors and others unaffiliated with the company may direct such questions directly to the Chairman of the Audit Committee at the same address, rather than the Chief Compliance Officer.

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**Nothing contained in this Code of Conduct is intended  
by the Company to be, nor shall it be construed as, an  
employment agreement.**

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## **1. Lawful and Ethical Behavior.**

The foundation on which this Code of Conduct is built is obeying the law and acting ethically. It is the Company's policy that you conduct business in accordance with applicable federal, state and local laws, rules and regulations and with the laws, rules and regulations of other countries in which the Company does business which are not in conflict with your responsibilities under U.S. laws and regulations. In addition, the Company's policy requires that you adhere to the highest standard of business ethics and conduct.

You must be alert and sensitive to situations that could result in illegal, unethical, or improper action. When you are faced with a business decision that seems to have ethical overtones, here are some questions that should be helpful to determine if your actions are proper:

- Do I have all the necessary facts?
- Am I informed about all of the legal implications?
- Who has an important stake in the outcome (e.g., employees, customers, suppliers, etc.), and what is that stake?
- Does the issue raise ethical issues that go deeper than legal or institutional concerns?
- What are the options for acting, and which options will produce the most good and do the least harm? Which options respect the dignity of all stakeholders?

If you remain uncertain about what to do, if you need advice, or if you have reason to believe that a domestic or foreign law could be violated in connection with Company business or that this Code of Conduct has been violated in any way, notify your immediate supervisor, the Compliance Officer or the Chairman of the Audit Committee.

## **2. Code of Ethics.**

This Code of Ethics is promulgated by the Board of Directors under section 406 of the Sarbanes Oxley Act of 2002 and the rules of the Securities and Exchange Commission promulgated thereunder and applies to all employees, officers and directors of the company. It contains standards reasonably necessary to promote: honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer and in other public communications; and compliance with applicable governmental laws, rules and regulations. It should be read in conjunction with the rest of this Code of Conduct.

You must:

1. Act with honesty and integrity and be able to identify and appropriately handle actual or apparent conflicts of interest. You should recognize that even the appearance of a conflict of interest can damage the Company. A conflict of interest may exist because of a relationship of yours or of a family member that could cause a conflict with your ability to perform your job responsibilities.
2. Produce, or cause to be produced, full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with or submits to the Securities and Exchange Commission and in other public communications.
3. Comply with applicable governmental laws, rules and regulations.
4. Promptly report any violation of this Code of Ethics to the Chairman of the Audit Committee or the Compliance Officer.
5. Promote ethical behavior by Company officers and employees involved in financial reporting.

You will be held accountable for your adherence to this Code of Ethics. Your failure to observe the terms of this Code of Ethics may result in disciplinary action, up to and including immediate termination of your employment.

If you are an executive officer or director, any request by you for a waiver of any provision of this Code of Ethics must be in writing and addressed to the Chairman of the Audit Committee. If you are not an executive officer or director, any request by you for a waiver of any provision of this Code of Ethics must be in writing and addressed to the Compliance Officer.

With regard to executive officers and directors, the Board will have the sole and absolute discretionary authority, acting upon such recommendation as may be made by the Audit Committee, to approve any waiver from this Code of Ethics. Any waiver for executive officers or directors from this Code of Ethics will be disclosed within five days on Form 8-K or any other means approved by the Securities and Exchange Commission.

### **3. Accurate Books and Records.**

As noted in the Company's Code of Ethics, the Company requires full, fair, accurate, timely and understandable recording and reporting of all Company information. You must act in a manner that ensures that all of the Company's books, records, accounts and financial statements are maintained in reasonable detail, appropriately reflect the Company's transactions and conform both to applicable legal requirements and to the Company's system of internal controls. To do so, you must execute and record transactions in accordance with all internal control procedures implemented by Company management. Furthermore, all of your expense

reimbursements must accurately reflect the true nature and amount of the expenses. In addition, if you are in any way involved in preparing the Company's disclosure documents (such as SEC filings or press releases), you must produce full, fair, accurate, timely and understandable disclosure in such documents.

*It is very important that you do not create, or participate in the creation, or perpetuation of, any records that are intended to mislead anyone or conceal any improper act or conduct.*

#### **4. Confidential Information.**

Confidential Company information is an important corporate asset that merits the same protection as the Company's physical assets. You have entered into a non-disclosure or confidentiality agreement detailing your obligations regarding the Company's confidential information, and you must adhere to this agreement.

#### **5. Securities Laws and Insider Trading.**

The rules relating to trading in the Company's securities and those of other companies with which the Company does business are covered in detail in the Company's memorandum "Trading in Depomed, Inc. Stock - Securities Law Compliance" (the "Insider Trading Policy"), with which you must become familiar and with which you must comply at all times. If you are uncertain about the legal rules involving your purchase, sale or transfer of any securities of the Company or any securities in companies familiar to you by virtue of your work for the Company, you should consult with the Compliance Officer identified in the Insider Trading Policy before making any such purchase or sale.

#### **6. Conflicts of Interest.**

The Company knows that it can only be truly successful through the diligence and loyalty of its employees. Therefore, you must put the best interests of the Company at the forefront of any work-related activity or decision and be able to identify and appropriately handle conflicts of interest.

While it is not possible to identify every particular activity that might give rise to a conflict of interest, a conflict of interest may exist because of a relationship of yours or of a family member that could cause a conflict with your ability to perform your job responsibilities. If you or your family members are engaged in any of the activities listed below, then there may be a conflict of interest, and you must disclose the facts concerning this activity to your immediate supervisor or the Compliance Officer in order to have the Company address the situation:

- (a) any ownership interest in any supplier, customer or competitor (other than nominal amounts of stock in publicly traded companies);
- (b) any consulting or employment relationship with any customer, supplier or competitor;

- (c) any outside activity that harms a relationship between the Company and any customer or potential customer, or that interferes with a current or potential contract relationship;
- (d) any outside business activity that is competitive with any of the Company's businesses;
- (e) any service on any board of directors or advisory board of any customer, supplier or competitor unless such board service has been disclosed to the Company;
- (f) any direct supervisory, review or other influential position on the job evaluation, pay or benefits of any close relative;
- (g) any sales or purchases of anything to or from the Company (unless it is pursuant to a routine program of disposal of surplus property that is offered to all employees in general); and
- (h) any situation in which, without proper authorization, you are required or tempted to disclose, or do disclose, any trade secret, confidential or proprietary information or intellectual property of the Company.

If you have any questions regarding activity which may create a conflict of interest, please discuss the situation immediately with your immediate supervisor or the Compliance Officer.

The Company reserves the right to determine when actual or potential conflicts of interest exist, and then to take any action, which the Company deems appropriate in its sole judgment. Such action may include, but is not limited to, having you divest the conflicting interest or return the benefit or gain received, realigning your duties and responsibilities, or disciplinary action, up to and including immediate termination of your employment.

## **7. Gifts and Entertainment.**

Generally, you and members of your immediate family may not accept gifts, services, discounts or favors from those with whom the Company does business or considers doing business. Gifts, entertainment, favors or gratuities are subject to the following guidelines:

- (a) You may accept gifts of nominal value ordinarily used for sales promotion (for example, calendars, appointment books, pens, etc.)
- (b) Ordinary "business meals" or reasonable business-associated entertainment consistent with local social and business customs may also be permissible if these actions are reasonable in cost and frequency.

If you receive a gift that does not fall within these guidelines, you should report it to the Compliance Officer so that appropriate action may be taken.

#### **8. Gifts, Gratuities, Bribes and Kickbacks.**

Offering gifts, gratuities or entertainment that are not reasonable complements to a business relationship, but that are primarily intended to obtain sales or otherwise win favor or influence, must be avoided with all parties with whom the company does business. Reasonable non-cash gifts and entertainment of modest value are generally permissible business courtesies when dealing with non-government customers. Such business courtesies must be reasonably related to a legitimate purpose and otherwise in compliance with Company policies and procedures.

Offering or accepting bribes or kickbacks to secure business is not only unacceptable, it may result in criminal prosecution. Payments to induce customers to agree to purchase or prescribe products may constitute violations of the Medicare Fraud and Abuse regulations and are strictly prohibited.

Special rules apply when dealing with government procurement officials. Employees should learn these rules and follow specific Company policies and procedures when doing business with the government. See “**Sales and Marketing Practices**”; “**Grants and Sponsored Trips**”; and “**Relations with Governments**”.

#### **9. Corporate Opportunities.**

You must not (a) take for yourself personally opportunities that are discovered through the use of corporate property, information or position; (b) use corporate property, information or position for personal gain; or (c) compete with the company. You owe a duty to the Company to advance its legitimate interests when the opportunity to do so arises.

#### **10. Unauthorized Use of Company Property or Services.**

You may only use Company property for legitimate business purposes. You may not use or remove from Company premises any Company property or services for any personal benefit or the personal benefit of anyone else. If you are uncertain about the distinction between personal and Company benefit, you should consult with your supervisor or the Compliance Officer.

#### **11. Product Quality; Regulatory Requirements.**

The safety and quality of the Company’s pharmaceutical products are essential to physicians and their patients, and are a key component of our values. The Company maintains quality and regulatory systems to ensure compliance with our internal requirements and applicable laws. These systems are and will be described in Company policies, standard operating procedures and training programs adopted from time to time by the company.

Employees should become familiar with these systems and work with their supervisors to obtain all necessary training. Management will consider disciplinary actions, up to and including immediate termination of employment, for violations of the Company's quality system policies and procedures. You are responsible for the quality of your work, for implementing the relevant provisions of the quality system and for complying with the Company's policies and procedures. Any violations of the law or noncompliance with Company procedures must be reported promptly to a supervisor or to the Compliance Officer.

You are expected to exert due diligence in preventing and detecting violations of laws and regulations related to the Companies quality systems. If you violate the Company's quality policies, practices and procedures, you may be personally liable for intentional violations of regulatory and legal requirements. If you are a supervisor, you may be liable for violations committed by employees under your supervision.

Any questions concerning potential violations may be referred to a member of the Quality or Regulatory departments, or to the Compliance Officer.

## **12. Sales and Marketing Practices.**

Each employee, in performing his or her duties, is responsible for truthfully conveying product attributes. You must not misstate facts or create misleading impressions in any labeling, advertising, packaging, literature or public statements. You must not promote a product for a use other than that specified in the approved product label. Omissions of important facts or wrongful emphasis of material may be misleading; the total impression of the message must be balanced.

Many laws, regulations, guidelines, policies and procedures are applicable to the sale and marketing of our products, including regulations of the FDA, the PhRMA Code and the OIG (Office of the Inspector General) guidelines, among others. The Company provides specific training in these matters to its sales and marketing employees and others in the Company involved in these activities. Management will consider disciplinary actions, up to and including immediate termination of employment, for violations of these laws, regulations, policies and procedures.

Vendors, consultants and third party service suppliers of services in connection with our sales and marketing activities must comply with all applicable laws, regulations, guidelines, policies and procedures. Each employee who engages a third party to perform these activities is responsible to ensure compliance by the third parties.

## **13. Grants and Sponsored Trips.**

In the normal course of conducting business in the pharmaceutical industry, the Company may have opportunities to foster knowledge of its business, products and facilities, or to enhance the level of medical practice, by:

- (a) awarding grants;

- (b) sponsoring medical seminars; or
- (c) paying speakers' fees.

Such payments must be carefully reviewed to determine whether they are permitted under the laws, regulations and ethical codes of the country or countries involved. If such payments are permitted, they must be made in accordance with the Company's policies and financial control procedures. Those policies and procedures require that all such payments must be made only in exchange for bona fide services at their fair market value.

Special training is provided to employees involved in the marketing and sale of the company's products and related activities to help ensure compliance with rules, regulations and reporting requirements applicable to applicable grants and sponsored trips. You should seek advice from the Compliance Officer if you have any questions concerning these types of payments.

#### **14. Fair Competition.**

The Company intends to succeed in the marketplace through superior performance, not by unethical or manipulative practices. You must treat customers and suppliers honestly and fairly. Do not make false or misleading remarks to customers or suppliers about other customers/suppliers or about competitors of the Company, their products or their services. You must avoid deprecation and criticism of competitors, their products or services, but you may state truthful descriptions of specifications and shortcomings of such products or services.

#### **15. Relations with Governments.**

General. All relations with government agencies, officials and employees must be conducted with honesty and integrity and must be in compliance with the letter and intent of applicable laws and regulations.

Government Procurement. It is the Company's policy to sell to all customers, including government-related entities, in an ethical, honest and fair manner. Some of the key requirements for employees working on business with the government are:

- (a) Providing high-quality products at appropriate prices.
- (b) Not offering or accepting kickbacks, bribes, gifts or other gratuities that are not permitted by applicable laws, regulations, policies and procedures.
- (c) Not soliciting or obtaining proprietary or source-selection information from government officials prior to the award of a contract.
- (d) Hiring present and former government personnel only in compliance with applicable laws and regulations.

- (e) Complying with laws and regulations ensuring the ethical conduct of participants in procurement set forth by federal, state and municipal agencies.
- (f) Accurately reporting required pricing information to government agencies.

Government procurement regulations can be highly complex. If you are involved with government transactions, you are responsible for understanding these requirements, and you should work closely with the Company's Legal and Finance Departments.

Responding to Government Requests. It is the Company's policy to cooperate with all reasonable requests concerning company operations from federal, state, municipal and foreign government agencies, such as the FDA, the SEC, the Drug Enforcement Agency, and the Department of Justice. However, you should consult with the Legal Department or Regulatory Affairs Department, as appropriate, before responding to these requests, submitting to an interview, or allowing government officials to have access to Company facilities and documents or to take photographs or conduct interviews.

If an employee is unclear about his or her area's procedures for responding to such requests, he or she should notify the Legal Department or the Regulatory Affairs Department, and wait for instructions before proceeding.

International Business. The Company observes the highest ethical standards in all of its business transactions, including those involving foreign countries. You may not take any action in connection with any international transaction or any action in any foreign country that would be illegal or improper in the US. Furthermore, you are required to observe all applicable foreign laws to which you or the Company may be subject and which are not in conflict with your responsibilities under U.S. laws and regulations, including foreign tax laws, customs duties and regulations, drug testing, licensing, manufacturing and marketing laws, rules and regulations and currency restrictions. You should not take any actions that are intended to improperly circumvent the application of such laws. Some of the concerns raised by international business are as follows:

(a) *Foreign Corrupt Practices Act.*

With limited exceptions, the Foreign Corrupt Practices Act prohibits the Company and you from, among other things, making an offer, payment, promise to pay or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any foreign official, any foreign political party or official thereof or any candidate for foreign political office, or any other person, such as a foreign agent or consultant, knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any foreign official, any foreign political party or official thereof, or any candidate for foreign political office, for the purpose of (i) influencing any act or decision of such foreign official in his or her official capacity, (ii) inducing such foreign official to do or omit to do any act in

violation of the lawful duty of such official, or (iii) securing any improper advantage, or inducing such foreign official to use his or her influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist the Company in obtaining or retaining business for or with, or directing business to, any person.

If you are asked to make any such payment, you should consult with your supervisor and the Compliance Officer before taking any action.

(b) *Antiboycott Laws.*

U.S. antiboycott laws prohibit or severely restrict the Company from participating in boycotts against countries friendly to the US, and require the Company to report both legal and illegal boycott requests to the U.S. government. If you are involved in selling the Company's products internationally, you must become familiar with the antiboycott laws and observe all of their requirements. Further information and guidance can be obtained from the Compliance Officer.

**16. Audits.**

In some cases, the Company will monitor compliance with its policies by audits. You are required to cooperate fully with any such audits and to provide truthful and accurate responses to any request.

**17. Dissemination and Amendment.**

The Company reserves the right to amend, alter or terminate this Code of Conduct at any time for any reason.

**18. Approval and Adoption**

Approved and adopted by the Board of Directors: December 5, 2003.

Amended and restated, and approved by the Board of Directors: March 7, 2008.

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