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**CHAPTER 17. VA RESEARCH CORPORATIONS AUTHORIZED BY TITLE 38  
UNITED STATES CODE (U.S.C.) SECTIONS 7381 THROUGH 7368****17.01 PURPOSE**

This Chapter contains basic policies and instructions governing Nonprofit Research Corporations (hereinafter called Corporation(s)) created pursuant to Title 38 United States Code (U.S.C.) § 7361 through 7368.

**17.02 POLICY**

a. The Veterans Health Administration (VHA) is required to conduct a program of medical research (including health services and rehabilitation research and development) in order to carry out more effectively its primary function of providing complete medical and hospital service for veterans and to contribute to the Nation's knowledge about disease and disability.

b. Prior to 1987, non-appropriated funds available for support of Department of Veterans Affairs (VA) approved research could be administered through the General Post Fund, the affiliated medical school, and occasionally other ill-suited mechanisms. A more effective mechanism for handling non-appropriated research funds was needed. To that end, Congress authorized the creation of VA nonprofit research Corporations to administer research funds received from non-VA sources.

**Authority:** *38 U.S.C. 1 7303; 31 U.S.C. § 9102; 38 U.S.C. II 7361 through 7368; 26 U.S.C. S 501(cX3); 18 U.S.C. 15 201 through 209; 57 Federal Register 35006-35067 (August 7, 1992) to be codified at S Code of Federal Regulations (CFR) Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch.*

**17.03 RELATIONSHIP BETWEEN VA AND THE CORPORATION**

a. **Purpose of VA Research Corporations.** The only statutory purpose of such a Corporation is to be a funding mechanism for the conduct of peer reviewed, approved research activities. A Corporation may not receive or administer funds for any other purpose. Because the only statutory purpose of the Corporation is to facilitate VA research, the Corporation may not receive or administer funds for any other purpose.

**Authority:** *38 U.S.C. II 7361, 7362.*

b. **Legal Authority and Status**

(1) **Federal Law.** If state law conflicts with Federal law governing the Corporation, then Federal laws preempt the conflicting state laws.

**Authority:** *38 U.S.C. 55 7361, 7365, 7368.*

(2) **State Law.** Each Corporation must conform to the applicable nonprofit corporation law of the jurisdiction in which it is organized.

**Authority:** *38 U.S.C. 1 7365.*

(3) **Accountability, Oversight, and Audit.** In connection with any audit, inquiry, investigation, or review of Corporation activities, the Corporation shall cooperate with and make its records available to the VA Inspector General, the Comptroller General, the Internal Revenue Service (IRS), the Secretary of Veterans Affairs, and the State where the Corporation is doing business. The Corporation must submit an annual report including the report of independent auditors to the Secretary of Veterans Affairs.

**Authority:** 38 U.S.C. 1 7366.

(4) **Interpretation of Law.** Only the VA General Counsel is authorized to speak authoritatively upon the numerous Federal laws governing the VA mission. General Counsel interpretations of such laws are controlling.

**Authority:** Public Law (Pub. L.) 100-527 § 8 (1988); 38 CFR § 14.500 (b).

## **17.04 RESPONSIBILITIES OF CORPORATE ACTORS**

### **a. Board of Directors**

(1) **Eligibility.** The corporate directors, who meet collectively as the Board of Directors, are responsible for the management and operation of the Corporation.

(a) The board must consist of at least five members which include:

1. The medical center Director,

2. The Chief of Staff (COS),

3. The Associate Chief of Staff (ACOS) for Research and Development (R&D) (or coordinator if the medical center has no ACOS for R&D position), and

4. At least two persons who are not officers or employees of the Federal Government (for this purpose, employees include persons holding VA without compensation (WOC) appointments) and who are familiar with issues involving medical research.

(b) Members of the Board who are not Federal officers or employees may not be affiliated with, employed by, or have any other financial relationship with any entity that is a source of funding for VA research unless that source of funding is a Governmental entity or an entity the income of which is exempt from taxation under the internal Revenue Code of 1986.

(c) The medical center Director has approval authority for the members of the Board of Directors of the Corporation serving that VA medical center and all changes to the membership of that board. **NOTE:** *Such board composition must be in compliance with state law.*

(d) The Board of Directors of each Corporation has authority to act for the Corporation as provided in the articles of incorporation and by-laws. This includes the authority to appoint, subject to the concurrence of the medical center Director, an Executive Director for the general operations of the Corporation, and to establish the specific duties and responsibilities of the Executive Director.

(2) **Compensation for Directors.** The medical center Director, the COS, and the ACOS (or coordinator) for R&D may not receive any compensation for services to the Corporation. All

other members of the Board of Directors (including VA employees not referred to in the preceding sentence), subject to appropriate legal restrictions, may be compensated by the Corporation for services performed other than during their VA duty hours.

**Authority:** 38 U.S.C. 1 7363; *Opinion of General Counsel (Op.G.C.) 40-89, (7-27-89).*

b. **Officers.** The medical center Director, COS, and ACOS for R&D (or coordinator if the medical center has no ACOS for R&D), may serve as Corporation officers but cannot receive compensation for such services. Other VA employees, subject to employee standards of ethical conduct, may serve as Corporation officers for compensation during non-duty hours; however they may not receive compensation from the Corporation for any such services carried out during their VA-duty hours.

c. **Executive Director.** Individual medical center directors may exercise the authority granted to the Under Secretary for Health pursuant to 38 U.S.C. § 7363(b), to concur in the appointment of an Executive Director. The Executive Director can receive a salary for services provided to the Corporation. If the Executive Director is also an employee of VA, the Executive Director can be compensated only for services performed for the Corporation which are outside the scope of the Executive Directors s VA duties and which are performed outside VA-duty hours.

Authority: 38 U.S.C §1 7363, 7366 (C); 18 U.S.C. 1 209.

d. **Employees**

C corporation employees work for and under the supervision of the corporation and are paid a salary in return for their services. Paid directors and officers are considered employees for the purposes of withholding, Social Security, state unemployment, and other payroll taxes the employer must pay. Subject to employee conduct rules and regulations, the corporation may employ and pay VA employees to perform work for the corporation outside the scope of their VA duties during non-VA duty hours.

(2) **VA Employees working for Corporations.** The receipt of compensation from a private source for performing VA duties and responsibilities is a Federal criminal violation. VA employees who perform work for the Corporation that is outside the scope of their VA duties and responsibilities can receive income from the outside source (e.g., a Corporation) provided the work is not performed during Government duty time and the work is not related to VA duties. For example, a VA employee who is a bookkeeper during duty hours can perform Corporation bookkeeping functions during non-duty hours and not violate 18 U.S.C. 1 209. A VA physician conducting VA research during VA duty hours cannot be compensated by the Corporation for work performed on the same peer reviewed, approved research activity, even if the work is performed during non-VA duty hours. **NOTE:** *VA employees may request an irregular VA tour of duty, subject to approval by their Supervisor, that is consistent with the requirements of permissible outside activities.*

(a) **Reimbursement to VA for Salaries of Employees.** The Corporation may provide funds to VA for salaries and benefits of VA research employees through gifts to the appropriation account from which the salary and/or benefit is paid.

**Authority:** 38 U.S.C. 1 8301; 18 U.S.C. 1 209; *VHA Supplement to MP-4, Part VII, Section 4.01(h).*

(b) **Corporation employees with VA WOC Appointments.** The Corporation may employ individuals to work on VA peer reviewed, approved research activities. Such individuals normally will have VA WOC appointments to work on such VA peer reviewed, approved

research activities.

**Authority:** *38 U.S.C. 1 513.*

### **17.05 CORPORATE OPERATIONS**

a. **Permissible VA Assistance.** The Corporation may use funds appropriated and available to the medical center specifically to support VA research. Funds donated to the General Post Fund specifically to support VA research activities may be transferred to the Corporation. Appropriated VA funds may not otherwise be used by or transferred to the Corporation.

(1) **Space and Other Physical Resources; Reimbursement to Medical Care Account.** The medical center may provide the Corporation, without reimbursement, space at the facility needed to conduct the Corporation '5 activities, and other services such as maintenance, repair, and utilities; but the Corporation must reimburse the medical center for other resources expended in connection with the operation of the Corporation.

**Authority:** *M-1, Part I, Chapter 15.*

(2) **Legal Counsel.** Either VA legal counsel or private legal counsel (paid for by Corporation funds) may be used in the operation of the Corporations. Every effort should be made to minimize the costs of private counsel. If the Corporation uses private legal counsel, the Corporation shall, on a quarterly basis, provide a copy of all written legal advice from private counsel to District Counsel. On a quarterly basis, the Corporation shall also provide District Counsel with copies of billings for services rendered by private counsel.

b. **Tax Exempt Status.** The Secretary of Veterans Affairs is required by law to dissolve the Corporation if it does not obtain United States IRS approval within 4 years of the date of its incorporation. The Corporation must comply with applicable IRS regulations. These IRS regulations require a joint effort on the part of the Corporation and the medical center in the active conduct of medical research. Indicators of the requisite joint effort include:

- (1) Activities carried on in space located within or adjacent to the medical center;
- (2) That the Corporation is permitted to use the facilities (including equipment, case studies, etc.) of the medical center on a continuing basis;
- (3) Active participation in the medical research by members of the medical center staff; and
- (4) An established relationship which provides that the cooperation of appropriate personnel and the use of medical center facilities will be required whenever it would aid such research.

**Authority:** *26 U.S.C. 1 501(cX3); 38 U.S.C. 11 7362, 7364(b); 26 CFR 1.170A-9 (cX2Xvii).*

c. **Approval of Expenditures.** No Corporation shall spend funds for a peer reviewed, approved research activity unless the peer reviewed, approved research activity is approved in accordance with VA procedures. All expenditures by a Corporation must be approved by an appropriate official whose peer reviewed, approved research activity would benefit from the expenditures; or, by a management official of the Corporation for expenditures related to Corporation business. Notwithstanding the foregoing, Corporations may spend funds for corporate membership in the National Association of Veterans Research and Education Foundations (NAVREF).

**Authority:** *38 U.S.C. 1 7362; M-3, Part I, Change 1, subparagraphs 3.01 a and b(1).*

d. **Licensure and Continuing Education.** Routine professional licenses, fees and membership for VA employees may not be paid by the Corporation. Corporation funds may be used to pay for attendance at continuing education or professional organization activities provided that attendance is for a purpose directly related to any peer reviewed, approved research activity. Licenses for qualified individuals who do not work for VA, but work exclusively for the Corporation, may be paid for by the Corporation if such payment can be related to support of the VA research mission. The Corporation may pay for publications that further any peer reviewed, approved research activity.

e. **Investment of Funds.** Corporations may not invest research funds solely for the purpose of generating income; however, they may deposit funds in interest bearing, federally-insured or federal depository accounts, or use idle funds to purchase instruments backed by the full faith and credit of the United States Government. For example, investment of funds in a mutual stock fund is prohibited; purchasing instruments of the U.S. Treasury is permitted.

Authority: 38 U.S.C. 1 7362; *Op.G.C. 18-91, (5-1-91)*; *Op.G.C. 55-90, (6-29-90)*; *Undigested Opinion, 5-8-91.*

f. **Travel Expenditures.** Corporation funds may be used for travel:

- (1) Directly related to any peer reviewed, approved research activity, and
- (2) Related to Corporation business, e.g., travel to further the acquisition of resources.

Authority: 38 U.S.C. 1 7362; *MP-1, Parts I and II.*

g. **Reporting Requirements.** Each Corporation shall submit by June 1, to the Office of Research and Development (12), VA Central Office, an annual report. This report is assigned Report Control Number (RCN) 10-0889; it shall:

- (1) Describe all material activities and accomplishments including:
  - (a) A description of all peer reviewed, approved research activities started, continued, or ended during the reporting period organized by researcher; and
  - (b) A listing of all gifts and grants received during the period identifying the donor and/or grantor, amount and/or market value, and purpose organized by researcher.
- (2) Include a list of its officers, directors, and all employees during the reporting period showing name, corporate position, and salary and/or compensation.
- (3) Include a report of independent auditors reporting on Corporation receipts and expenditures and provide the balance sheet for the most recent period and a statement of activity (also referred to as a statement of support), revenue, expenses, capital additions, and changes in fund balances. Include the auditor's management letter, if applicable.
- (4) Include IRS Tax Form 990 or 990EZ for the previous year;
- (5) Include any update about or change in tax status with the IRS; and
- (6) Include current signed copies of compliance certification with conflict of interest laws signed annually by all employees, directors and officers, see Appendices 17B and 17C.

*NOTE: The Executive Director of the Corporation is responsible for providing a copy of the independent auditors' report to the Fiscal Officer at the VA medical center which the Corporation serves.*

**Authority:** 38 U.S.C. 1 7366.

h. **Agreements with Donors.** Before accepting or spending any funds provided by a specific donor, a document must be executed setting out the nature and conditions of the gift or grant (see App. 17A). Any such document that varies from this standard format appearing in Appendix 17A must be submitted to the VA District Counsel for review. The Corporation shall maintain a copy of all such documents.

i. **Certification Statement on the Status of a VA Research Corporation by the medical center Director.** Each medical center Director serving on a Corporation Board of Directors shall submit on an annual basis to the Office of Research and Development, VA Central Office, a signed statement certifying as to general operations of the Corporation. This certification shall include a statement about the awareness of, and compliance with Federal conflicts of interest laws. A copy of this certification statement is found in Appendix 17B.

**Authority:** 38 U.S.C. Section 7366; subparagraph 17.0S(g)(6).

## **17.06 LIABILITY, INSURANCE, AND OTHER BENEFITS**

a. Because work on a peer reviewed, approved research activity is in furtherance of a Government mission, actions of VA employees, including those on WOC status, whether working on a full-time or part-time basis on a peer reviewed, approved VA research activity will generally be protected from personal liability under the Federal Tort Claims Act (FTCA).

(1) Application of the FTCA is subject to certification by the Attorney General that the individual was performing services within the scope of Government employment.

(2) Since Corporation employees conducting activities not directly related to peer reviewed, approved research activities are not protected by the FTCA, the Board of Directors, or the Executive Director, should purchase sufficient liability insurance for officers and these employees.

b. VA employees performing official duties who are involved in the functioning of a Corporation are considered employees for the purposes of compensation for work injuries (5 U.S.C., Ch. 81). Members of the Board of Directors, who are not employees of the Federal Government, and employees of the Corporation, including VA employees who are compensated by the Corporation during non-duty hours (e.g., corporate officers, the Executive Director and any private legal counsel), would not be entitled to compensation for work related injuries.

**Authority:** 28 U.S.C. Sections 1346(b), and 2671; 38 U.S.C. 1 7316.

## **17.07 CONFLICT OF INTEREST ISSUES**

All Corporation employees, officers and directors are subject to Federal statutes and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official duties. Each medical center Director serving on a Corporation Board of Directors and each Corporation director, officer, and employee shall submit on an annual basis to the Office of Research and Development (12), VA Central Office, a signed statement certifying awareness of, and compliance with these laws and regulations. **NOTE:** A copy of the

Corporation director and/or officer and/or employee certification statement is found in Appendix 17C.

Authority: 38 U.S.C. § 7366; subparagraph 17.OS(g)(6).

### 17.08 RECORDS AND RECORDS RETENTION

a. The Corporation must make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and transactions of the Corporation. These records must be:

(1) Designed to furnish information needed to protect the legal and financial rights of the Government and of persons directly affected by the Corporations activities; and

(2) Maintained for the benefit of the Corporation.

b. The Corporation's officers and directors have fiduciary obligations to the Corporation. Proper documentation:

(1) Will evidence proper authorization of major business decisions.

(2) Will evidence information necessary if the IRS conducts a review of the Corporation's tax-exempt status. All pertinent tax records for purposes of IRS review shall be retained for 6 years.

c. All other non-tax records shall be retained according to Federal and state laws.

d. The creation and maintenance of such records shall be consistent with VA policy and uniform accounting procedures created for these Corporations.

e. Corporations shall maintain adequate and sufficient timekeeping, payroll, and other records of compensation to clearly demonstrate that compensation is paid in accordance with corporate policy for work conducted outside a VA tour of duty.

Authority: 26 U.S.C. Section 6501; M-3, Part I, Chapter 8.

### 17.09 DISSOLUTION OF CORPORATION

The Secretary of Veterans Affairs may authorize the dissolution at any VA medical center of a Corporation. Medical center directors are delegated authority to approve the dissolution of a Corporation in accordance with state law:

a. When such Corporation fails to obtain IRS approval within the time limitation referred to in subparagraph 17.05(b), or

b. When a determination has been made by the Secretary of Veterans Affairs, or other official having authority over such Corporation that the Corporation is no longer serving in the best interest of VA.

Authority: 38 U.S.C. 55 512, 7361, 7363.



**GIFT OR GRANT AGREEMENT**

The donor (grantor) \_\_\_\_\_, a person, entity or corporation with an address at \_\_\_\_\_, donates (grants) funds in the amount of \$\_\_\_\_\_ to \_\_\_\_\_ (Name of Research Corporation) \_\_\_\_\_. The gift g(rant) is to be used for a peer-reviewed, approved research activity title \_\_\_\_\_, Protocol Number \_\_\_\_\_, or at the discretion of the governing board, for support of any lawful Department of Veterans Affairs research activity at the medical center. The gift (pant) is subject to the restrictions or provisions described in the attachment to this agreement. If requested, the Donee (Grantee) shall keep the Donor (Grantor) advised of the status of the Study and usage of the Funds by providing periodic reports including a final report of the Study and usage of the Funds.

**DONOR (GRANTOR):**

**RESEARCH CORPORATION:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Damn: \_\_\_\_\_

Date: \_\_\_\_\_



**ANNUAL STATEMENT OF MEDICAL CENTER DIRECTOR CERTIFYING  
THE STATUS OF THE VA RESEARCH CORPORATION**

I hereby certify that the following has been completed, or is true as to the best of my knowledge and belief:

**1. Constitution of Board.** The Board of Directors of the research corporation (henceforth called Corporation) includes:

- a. The Director of the medical center,
- b. The Chief of Staff of the medical center,
- c. The Associate Chief of Staff for Research at the medical center (or, at a smaller facility without such a position, the Research Coordinator), and
- d. At least two members who are not officers or employees of the Federal Government (and not Department of Veterans Affairs (VA) without compensation (WOC) employees) and who are familiar with issues involving medical and scientific research.

**2. Director as Officer.** No director of the Corporation is also serving, for pay, as an officer of the Corporation.

a. No VA employee in any of the positions referred to in Title 38 United States Code (U.S.C.) Section 7363(a)(1), who serves on the Board of Directors receives any compensation for services to the Corporation.

b. No director is affiliated with, employed by, or has any present or prospective other financial relationship with any entity that is a source of funding for VA approved research unless that source of funding is a governmental entity or an entity the income of which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986.

**3. Conflicts of Interest.** Each director or employee has submitted an annual signed statement certifying:

- a. Awareness of the applicable laws and regulations, and
- b. Compliance with such laws and regulations in the same manner as Federal Employees are required.

**4. Executive Director**

a. The Board of Directors has appointed an Executive Director to be responsible for the operations of the Corporation with other duties as the Board may have prescribed.

b. The Under Secretary for Health, or designee, has been informed of and concurred with the appointment of the Executive Director to that position.

**5. Dual Compensation.** No VA employee (except those hired by the Corporation to work on VA peer reviewed, approved research activities and who are given WOC appointments by VA) is receiving any salary or anything of monetary value from the Corporation as compensation for the employee's services to VA.

**6. Procedures for Approval of Peer Reviewed, Approved Research Activities.** The Corporation has not spent any funds for peer reviewed, approved research activities unless the peer reviewed, approved activity has been first approved in accordance with procedures set out in Veterans Health Administration (VHA) manual M-3, including a peer review process and budget review.

### **7. Annual Audit and Report**

a. The Corporation has obtained annually a report of independent auditors concerning the receipts and expenditures of funds by the Corporation.

b. The Corporation has submitted annually to the Secretary of Veterans Affairs a report:

(1) Providing a detailed statement of its operations, activities, and accomplishments during that year; and

(2) Including a copy of the report of independent auditors.

c. The Executive Director of the Corporation has provided a copy of the report of independent auditors to the Fiscal Officer(s) at the VA medical center(s) which the Corporation serves.

### **8. Agreements with Donors**

a. Before accepting or spending any funds for any peer reviewed, approved research activity funded by a specific donor, the Executive Director of the Corporation has reviewed the donor agreement.

b. Before accepting or spending any funds for any peer reviewed, approved research activity funded by a specific donor, the Corporation has submitted any agreement that varies from the standard format authorized by VA to the VA District Counsel for review.

c. The Corporation maintains a copy on file of all agreements with donors.

### **9. Review by District Counsel of Correspondence with Any Private Counsel**

a. If the Corporation uses private legal counsel, the Corporation, on a quarterly basis, provides a copy of all written legal advice received from private counsel to District Counsel.

b. On a quarterly basis, the Corporation provides District Counsel with copies of billings for services rendered by private counsel including itemized and detailed work descriptions.

**10. Maintenance of Funds.** Any research funds received, prior to approval or expenditure, are invested only in an account or fund which is Federally-insured, or in a Federal depository, or is invested in an instrument backed by the full faith and credit of the United States Government.

**11. Transfer of Royalties to Research Corporation.** Royalties and other income received by the medical center from licensing or assignment of inventions pursuant to a Federal Technology

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Transfer Act agreement have not been transferred to or administered by the Corporation.

**12. Liability.** Liability insurance to cover the acts of or omissions to act of the Corporation's employees has been purchased and is in full effect.

I am aware of and having read, and I am in compliance with the Standards of Ethical Conduct for Employees of the Executive Branch, as amended.

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(Signature of the Medical Center Director)

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(Date)



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**STATEMENT FROM THE VA RESEARCH CORPORATION'S DIRECTOR  
AND/OR OFFICER AND/OR EMPLOYEE CERTIFYING  
COMPLIANCE WITH ETHICAL CONDUCT**

I am aware of and have read, and I am in compliance with the Standards of Ethical Conduct for Employees of the Executive Branch, as amended.

\_\_\_\_\_  
(Signature of Director and/or Officer, and/or Employee)

\_\_\_\_\_  
(Date)