APPOINTEE EXEMPTION DISCLOSURE FORM

(If you are receiving this form, it must be completed and returned along with your CV form above)

PART 1:	
NAME:	
ADDRESS:	
BOARD/COMMISSION NAME:	
PART 2:	
Please Check Item(s):	Exemption Requested: ☐ No (If no, check box and skip to Part 3, Signature)
	☐ Yes (If yes, check box and complete rest of Part 2 and 3)
I request exemption for: ☐ Financial Interest ☐ Employment	

Financial Interest	**Employment**
Name of Entity where the financial interest exists:	Employment to be Exempted:
Address of Entity:	Your Position/Job Title:
Interest to be Exempted:	
Current Value: ☐ Under $1,000 ☐ $1,000-$5,000 ☐ $5,000-$10,000 ☐ $10,000 or More	

Explain below why you believe you may have financial interests or an employment situation that, in the absence of an exemption, will conflict with your service on the board or commission for which appointment is being considered. You may wish to contact the State Ethics Commission for information or advice at 410-260-7770.

PART 3:		
Appointee:	Signature:	Date:

For appointments made by the Governor: Attach this completed form to the Appointments BIO/CV form and send to State Board of Veterinary Medical Examiners, 50 Harry S Truman Parkway, Room 102, Annapolis, MD 21401, Attention: Laura Downes, Executive Director

Form #5

EXECUTIVE DEPARTMENT
STATE OF MARYLAND

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GOVERNOR

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KATHERINE P. THOMPSON
Assistant General Counsel

January 21, 2015

TO: Prospective Appointees to Maryland Boards and Commissions

SUBJECT: Instructions - Appointee Exemption Disclosure Form/Partial Ethics Law Exemptions

(Note: These instructions are applicable to individuals who are under consideration for an appointment or reappointment to a specific board, commission or similar State body.)

Background:

The Maryland Public Ethics Law ("Law") deems that a person who serves as a member of a State board, commission, committee, task force, work group or similar entity (referred to here for the sake of simplicity as "board") is a public official and subject to the Law's conflict of interest provisions. As a consequence, board members must abide by some restrictions on their outside employment activities. (Note that for purposes of the Law, employment other than service on a State board is viewed as "outside" employment). The Law also imposes some restrictions on a board member's financial interests (e.g. business or stock holdings). These employment and financial interest restrictions are based on the premise that one who holds a position with the State (whether as a paid State employee or volunteer member of a board) cannot hold other affiliations that could induce that person to take actions in his/her State capacity that are influenced by his/her private interests.

For board members, these restrictions apply by prohibiting a member from <u>being employed by</u>, or <u>having a financial interest in</u>, an entity that 1) is regulated by the member's board, or 2) does business with or seeks to do business with the member's board. The Law also prohibits these affiliations (i.e. employment or financial interest), even if with an entity not regulated by or doing business with one's board, if the affiliation would be incompatible with service on the board. The good news – after initially concluding that certain employment and financial interests present prohibited conflicts, the Law allows for exemptions under certain conditions, as discussed below, that permit a person to serve despite the existence of an otherwise prohibited affiliation. Using the State Board of Nursing as an example, this memorandum will attempt to illustrate the application of the Law, and explain how two particular exemptions may apply and the steps you must take to secure them.

Like many State boards, the State Board of Nursing is charged with a regulatory responsibility, in this case the regulation of the nursing profession in this State. A candidate for a position on the State Board of Nursing who is a nurse in his/her private professional capacity would be regulated by the very Board for which he/she is a candidate for membership, and by definition, membership on the Board would result in a conflict of interest. Furthermore, if that candidate owned or worked for a private business that taught a course to help prepare candidates for a licensing examination (a process regulated by the Board of Nursing), that business affiliation would also present a conflict. Or if the candidate for membership on the Board owned or worked for a catering business in his/her private capacity that catered functions sponsored by the Board of Nursing, or sought to do so, that business interest would also present a conflict of interest. Each of these examples would normally preclude service on the Board of Nursing since they would be regulated by, or do business with, the Board.

Finally, the State Ethics Commission has also determined that volunteer service on a management or operational board of a private professional organization (for example, the Maryland Nurses Association) constitutes employment for purposes of the Law's conflict of interest restrictions. The Commission observed that professional associations often advocate and lobby to assure the advancement of the profession they represent, which has the potential of bringing them into conflict with the State board that regulates the profession. Note here that the Commission has distinguished between membership in a professional association, or even voluntary participation on an association committee (both of which are not prohibited) and an affiliation where an individual holds a policy-making, operational or management position (e.g. as an officer or board member). In the latter situation, the Commission has determined it is too "difficult for individuals to shift perspectives and carry out both functions (membership on a State board and a fiduciary role in a professional association) in a manner that is impartial and demonstrative of independent judgment."

The Exemptions:

Normally the existence of one of the foregoing conflicts would act as a bar to service on a board. However, the Law provides for two exemptions which are uniquely applicable to members of boards as follows:

1. The Law provides an exemption for one appointed to a regulatory or licensing unit (e.g. State Board of Nursing) if the statute governing the board requires that persons subject to its jurisdiction (i.e. regulated by it) be appointed to it. Of the 13 members of the State Board of Nursing, 8 are required to be registered nurses and 3 are required to be licensed practical nurses. Because the statute governing the State Board of Nursing provides for this membership, these persons are exempted by operation of law and need take no further action.

2. The Law provides an exemption for a member of a board who holds a conflicting employment or financial interest when appointed, such as the nurse who owns or works for a business that helps nurses prepare for a licensing exam, or who owns or works for a catering business doing or seeking business with the Board (both mentioned above). To obtain this exemption, the conflict must be disclosed at the time of appointment, using the attached **Appointee Exemption Disclosure** form. If, after the required disclosure the appointment is made by the appointing authority (the person charged by statute with making the appointment), the exemption is granted as to the employment and/or financial interests that would otherwise be disqualifying. Keep in mind three caveats: a) the exemption only applies to employment/financial interests that exist at the time of appointment and are disclosed at that time (subsequently arising conflicts are not covered); b) appointees are still responsible for adhering to all other aspects of the Ethics Law, including the participation restrictions (i.e. if an issue arises before the Board concerning the exempted conflict, the member must not participate in the matter in any way); c) the exemption is not available to State employees who are appointed to Statewide boards.

Certain affiliations are always inconsistent with membership on a State board and the Commission has determined these cannot be cured by a time of appointment exemption (e.g. dual service as a member of a State board and as an officer or director of a professional association whose members are regulated by the State board). If, however, the State board in question is not a licensing or regulatory board (and instead has, for example, only an advisory function), dual service could be permitted if disclosed on a time of appointment form.

Conclusion:

If you require additional information involving the details discussed here or any other matter related to the State Ethics Law (for example, the possibility that service on a State board will require the board member to file an annual financial disclosure statement), please call the State Ethics Commission at 410-260-7770 for assistance. For more information concerning a specific board appointment or the processing of an exemption request, please contact the appointing authority. It¶s the appointing authority and the Senate (if confirmation by the Senate is required) who decide whether to grant the exemption, not the State Ethics Commission. The Ethics Commission's involvement is limited to resolving issues that may arise regarding the scope of the exemption or whether the exemption complies with the statutory requirements. Form #5