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<b>IN THE MATTER OF</b>	:	<b>STATE ETHICS COMMISSION</b>
<b>MARK MANIGAN,</b>	:	
<b>MEMBER, BOARD OF GOVERNORS,</b>	:	
<b>RUTGERS UNIVERSITY</b>	:	<b>Commission Case No. 09-23</b>
	:	
	:	<b>DECISION</b>

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## **BACKGROUND**

Rutgers University (“Rutgers”) requested an exception from the requirements of Executive Order 14 (Corzine, 2006) (“EO 14”) on behalf of a Board of Governors member, Mark Manigan (“Manigan”). Manigan was appointed to the Rutgers Board of Governors by Governor Murphy on October 31, 2022, and was sworn in on December 6, 2022. EO 14 prohibits a member of a State college or university governing body from being employed by or deriving or receiving any compensation from an entity that does business with the institution that the board member governs. Manigan is employed by RWJ Barnabas Health, Inc. (“RWJBH”) as its President and Chief Executive Officer. Rutgers and RWJBH entered into a Master Affiliation Agreement (“MAA”) in 2018, with several subsequent agreements, and the two entities have a several decades long affiliation.

The affiliation of RWJBH with Rutgers (previously with University of Medicine and Dentistry of New Jersey (“UMDNJ”)) allows medical school and other health sciences faculty and staff to provide clinical care and experiential teaching at RWJ University Hospital. Additionally, in 2012, the New Jersey Legislature passed the New Jersey Medical and Health Sciences Restructuring Act (the “Act”), *N.J.S.A. 18A:64M-1 et seq.*, which transferred several health sciences schools, institutes and centers of the then-UMDNJ to Rutgers. Among the public purposes for the Act, was the State’s stated recognition of “commitment to sustaining and growing its universities” and achieving in the top tier of research universities. In 2016, Barnabas Health System merged with Robert Wood Johnson Health (which included RWJ University Hospital) and became RWJBH, for which Manigan is the current President and CEO.

In furtherance of the public goals identified in the Act, and to further the benefits of Rutgers’ continued affiliation with the State’s largest non-profit hospital system to create a world-class academic medical center, the two entities entered into the 2018 MAA, with several subsequent implementing agreements. These agreements provide for significant support to Rutgers’ recruitment of world-class medical researchers, educators, and clinicians and afford Rutgers faculty clinicians, medical students, and residents access to RWJ University Hospital and other RWJBH locations to provide both clinical services and educational opportunities. To further this relationship, the MAA includes provisions for collaboration between the leadership of each entity, including members of each serving on the others’ governing bodies. The MAA recognizes that, “individuals appointed to the governing boards, or committees of such boards . . . shall be subject to the applicable law and policies (including the conflict of interest policies) of either Party,

including with respect to University Board Designees, the applicable provisions of the New Jersey Conflicts Law.”

EO 14 expressly prohibits a member of a State college or university governing board and the board member's spouse, domestic partner, or child, parent, or sibling residing in the same household from being employed by or deriving or receiving any compensation from a firm, association, or partnership that does business with the institution that the board member governs. EO 14 defines the term “do business with” as “providing or receiving any goods or services or otherwise engaging in a transaction involving the exchange of anything of value.” Pursuant to paragraph 5 of EO 14, however, the State Ethics Commission is authorized to grant exceptions from this prohibition if “in the judgment of the Executive Director, the entity that is doing business with the institution is doing so pursuant to a contract awarded in accordance with the competitive bidding laws applicable to that institution or the public interest requires an exception to be made.”

Historically, where an EO 14 exception has been granted, the Commission has also always required that the member of the governing board recuse from all matters involving the entity which prompted the request for the exception. However, the Commission was asked to consider Rutgers’ request for a nuanced exception to this precedent. Rutgers requested that Manigan should not be required to recuse from all matters involving RWJBH while serving on the Rutgers Board of Governors if his participation in the matter serves the “public interest” and there is no “material and substantial conflict of interest.” The recusal rule, *N.J.A.C. 19:61-7.1, et seq.*, generally requires that a State official recuse from all matters where they have either a direct or indirect financial or personal interest which is incompatible with the discharge of their State duties. Such incompatible financial and personal interests requiring recusal are defined to include, among other things, outside employment, a fiduciary relationship, a source of income, “which interest might reasonably be expected to impair a State official’s objectivity and independence of judgment in the exercise of his or her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his or her trust as a State official.” *N.J.A.C. 19:61-7.4(c)*.

Since Manigan’s appointment to the Board of Governors and during the pendency of this application, Rutgers’ Counsel and Ethics Liaison Officer (“ELO”) counseled him to recuse on all matters involving RWJBH.

## **APPLICATION**

The State has a clear public interest in educating future health care providers, advancing medical and health care research, and providing quality medical care to the residents of New Jersey, particularly in underserved or impoverished communities. The MAA between Rutgers and RWJBH was entered into to promote these same public interest goals and furthers the cooperation between the two entities. Furthermore, appointment of a representative of RWJBH to the Rutgers governing board is contemplated by the MAA. Nothing in that agreement, however, eliminates the need for said appointee to comply with the Conflicts of Interest Law, which includes the obligation to recuse from matters involving the member’s employer and otherwise complying with the recusal rule, where Manigan’s employment with and fiduciary duty to RWJBH may impair his objectivity and independence of judgment in the exercise of his official duties as a member of the Rutgers

Board of Governors or might reasonably be expected to create an impression or suspicion among the public that he is engaged in conduct violative of his trust as a State official.

It is within the discretion of the Executive Director to grant waivers of EO 14, with the approval of the Commission. Here, the waiver is in the public interest and in furtherance of the agreement between Rutgers and RWJBH and further promotes the cooperation between the two entities. To ensure the integrity of the actions taken by the Rutgers Board of Governors and in recognition of the terms and intent of the MAA between Rutgers and RWJBH, approval of the EO 14 waiver should be conditioned upon Manigan's recusal from the Rutgers Board of Governors' matters involving RWJBH where the interests between the two entities are adverse, including by way of example, but not limited to:

- (1) Amendment, extension, or termination of any agreements between Rutgers and RWJBH;
- (2) Establishment, negotiation, or termination of any obligations or commitments between Rutgers and RWJBH;
- (3) Litigation or dispute resolution between Rutgers and RWJBH; and/or
- (4) Joint facilities projects between Rutgers and RWJBH.

However, in recognition of the unique circumstance arising from the existence of the MAA, which predated Manigan's appointment, and the strong public interest in these two entities continuing to work together for the benefit of the State of New Jersey, an exception to the absolute recusal requirement of past precedent should be permitted. Where the positions of Rutgers and RWJBH are not adverse, as determined only by the Ethics Liaison Officer ("ELO") for Rutgers, Rutgers' Counsel, or the State Ethics Commission staff, Manigan should be permitted to participate in those matters subject to such prior approval.

## **DECISION**

The Commission grants an EO 14 exception to Mark Manigan permitting him to serve as a Member of the Rutgers Board of Governors and adopts the recommendations that he must execute and abide by a written recusal from official duties involving RWJBH, where the interests of Rutgers and RWJBH are adverse, and must obtain prior approval to participate in matters where the interests are not adverse, as outlined above.

DECISION RENDERED BY THE  
STATE ETHICS COMMISSION ON  
THE 1<sup>ST</sup> DAY OF AUGUST 2023