



# PACER HEALTH

## AUDIT COMMITTEE CHARTER

### I. FORMATION AND STATEMENT OF PURPOSE.

1) Formation of Audit Committee. The Audit Committee (the "Committee") of the Board of Directors (the "Board") of Pacer Health Corporation (the "Company") was established in April 2005. This Charter was adopted by the Board as the Committee's Charter in May 2005.

2) Committee's Statement of Purpose. The Committee shall work closely with the Board, executive management, the Company's internal auditor and any independent auditor of the Company in order to assist the Board in overseeing the accounting and financial reporting processes of the Company and audits of the Company's financial statements. In furtherance of the above responsibilities, the Committee is charged with assisting the Board in its oversight of: (i) the integrity of the Company's financial statements; (ii) the Company's compliance with legal and regulatory requirements; (iii) the independent auditor's qualifications and independence; (iv) the performance of the Company's internal audit function and independent auditors. The Committee is also charged with the responsibility of preparing the report that the Securities and Exchange Commission rules require be included in the Company's annual proxy statement and with the responsibility of performing such other tasks as are consistent with this Charter.

### II. ORGANIZATION.

#### 1) Composition of Committee Members; Independence Requirement; Other Requirements.

a) *Independence.* The Committee shall consist of at least three (3) members of the Board, and all Committee members shall be independent, including all provisions specific to audit committee members, the requirements of Rule 10A-3(b)(1) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and all other applicable regulatory requirements. In the event a Committee member serves on the audit committee of more than two additional public companies, in order to serve on the Committee the Board must determine that such simultaneous service will not impair the ability of such member to effectively serve on the Committee.

b) *Financial Literacy.* Each member of the Committee shall be financially literate, as such qualification is interpreted by the Board in its business judgment, or must become financially literate within a reasonable period of time after appointment to the Committee.

c) *Financial Expertise.* At least one member of the Committee must have accounting or related financial management expertise, as the Board interprets such qualification in its business judgment, and shall satisfy the definition of a "audit committee financial expert" set forth under Item 401(h) of Regulation S-K promulgated by the Securities and Exchange Commission.

2) Election and Term of Committee Members. Each Committee member shall be appointed by resolution adopted by the majority of the entire Board and shall hold office at the pleasure of the Board and until his or her successor has been duly appointed and qualified, or until his or her prior resignation or removal.

3) Removal or Resignation. Any Committee member may be removed with or without cause by vote of the majority of the entire Board. Any member of the Committee may resign from the Committee at any time by giving written notice to the Board or the Board's Chairman. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board or the Chairman, and the acceptance of the resignation shall not be necessary to make it effective. The resignation of a director as a Committee member shall not constitute such director's resignation from the Board.

4) Place, Time, and Procedural Matters of Committee Meetings. The Committee should meet a minimum of four (4) times per year. One Committee member shall serve as the Chair of the Committee and the Board shall determine which member shall be the Chair. The Committee will meet at such times and places as shall be determined by the Chair, or as may be requested by any two Committee members, upon three (3) days notice to each member personally, by mail or by written telecommunication. The agenda of each Committee meeting will be prepared under the direction of the Chair and, whenever reasonably practicable, circulated to each Committee member prior to the meeting date. The Chair will preside, when present, at all Committee meetings. A meeting prior to the Company's fiscal year-end shall be held with the internal auditor, independent auditors and management to discuss the scope and objectives of both the internal and external examinations. A post-audit meeting with the same parties in attendance shall be held to review and discuss written comments and/or other matters noted during the internal and independent auditors' examinations, along with management's response to each. The Committee shall also hold private sessions with management, the internal auditors and the independent auditors separately, as necessary or desirable, to encourage candid discussions of any sensitive issues. In addition to the foregoing, and as necessary or desirable, members of management, general counsel, the internal auditor, the Chief Corporate Compliance Officer, representatives of the outside auditor and such other persons as the Committee determines shall be present at any Committee meeting or make presentations to the Committee.

5) Action by the Committee. A majority of the Committee shall constitute a quorum. Any action required or permitted to be taken at any Committee meeting may be taken without a meeting if all members of the Committee consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Committee. Members of the Committee may participate in a Committee meeting by conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting by these means shall constitute presence in person at the meeting.

6) Minutes. Minutes shall be prepared for all meetings of the Committee to document the Committee's discharge of its responsibilities. The minutes shall be circulated in draft form to all Committee members to ensure an accurate final record, and shall be approved as presented or as modified at the next Committee meeting.

### **III. DUTIES AND RESPONSIBILITIES.**

The primary duties and responsibilities of the Committee shall be as follows:

1) Responsibilities Relating to Registered Public Accounting Firms. The Committee shall be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged for the purpose of preparing and issuing an audit report or performing any other audit, review or attest services for the Company. The Committee shall instruct the independent auditor to report directly to the Committee.

2) Pre-Approvals. The Committee shall have the sole authority to review in advance, and grant appropriate pre-approvals of: (i) all auditing services to be provided by the independent auditors; (ii) all non-audit services to be provided by the independent auditors as permitted pursuant to Section 10A of the Exchange Act (subject to exceptions for *de minimus* amounts set forth in such section); and (iii) in connection therewith to approve all fees and other terms of engagement. The Committee shall also approve disclosures required to be included in Securities and Exchange Commission periodic reports filed under Section 13(a) of the Exchange Act with respect to non-audit services provided by the independent auditors. The foregoing pre-approvals may be delegated to a subcommittee or the Chair, provided that all decisions made by such subcommittee or the Chair be presented to the full Committee at its next scheduled meeting.

3) Independent Auditor Review and Evaluation. At least annually, the Committee shall obtain and review a report by the independent auditor describing: (i) such auditor's internal quality control procedures; (ii) any material issues raised by the most recent internal quality-control review, or peer review, of such auditor, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years respecting one or more independent audits carried out by such firm, and any steps taken to deal with any such issues; and (iii) all relationships between the independent auditor and the Company. The Committee is responsible for actively engaging in a dialog with the independent auditor with respect to all disclosed relationships or services that may impact the objectivity and independence of the independent auditor. Following such dialog and after reviewing the foregoing report, the independent auditor's work throughout the year and such other factors as the Committee shall determine, the Committee shall review and evaluate the independent auditor's qualifications, performance and independence. The Committee's evaluation shall include, among other things, a review of the lead partner of the independent auditor and shall take into account the opinions of Company management and personnel of the internal audit department. The Committee shall also take appropriate action in response to the independent auditor's report to satisfy itself of the independent auditor's independence. The Committee shall ensure the rotation of the lead partner as required by law and shall consider whether there should be regular rotation of the independent audit firm. The Committee shall present its conclusions with respect to the independent auditor to the Board.

4) Financial Statement Discussion; Annual Report Recommendation and Report. The Committee shall meet to review and discuss the Company's annual audited financial statements and quarterly financial statements with Company management and the independent auditor, including reviewing the Company's specific disclosures under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations."

5) Annual Report Recommendation. The Committee shall be responsible for recommending to the Board of Directors that the Company's audited financial statements be included in the Company's Annual Report on Form 10-K and shall prepare the report required to be included in the Company's annual proxy statement pursuant to the rules of the Securities and Exchange Commission.

6) Audit Difficulties. The Committee shall review with the Company's independent auditor any audit problems or difficulties and the response of Company management thereto. Such review shall include, but not be limited to, any restrictions on the scope of the independent auditor's activities or on access to requested information, any significant disagreement with Company management, any accounting adjustments that were noted or proposed by the independent auditor but were "passed" (as immaterial or otherwise), any communications between the independent auditor's audit team and such independent audit firm's national office respecting auditing or accounting issues presented by the engagement and any "management" or "internal control" letter issued, or proposed to be issued, by such independent audit firm to the Company. The foregoing review shall also include a discussion of the responsibilities, budget and staffing of the Company's internal audit function. The Committee shall be responsible for the resolution of all disagreements between Company management and the independent auditor regarding financial reporting.

7) Financial Reporting Review. The Committee shall review and discuss: (i) major issues regarding accounting principles and financial statement presentations, including any significant changes in the Company's selection or application of accounting principles, and major issues as to the adequacy of the Company's internal controls and any special audit steps adopted in light of material control deficiencies; (ii) analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements; (iii) the effect of regulatory and accounting initiatives, as well as any off-balance sheet structures which the Company may implement on the financial statements of the Company; and (iv) the type and presentation of any information to be included in earnings press releases (paying particular attention to any use of "pro forma," or "adjusted" non-GAAP information), as well as financial information and earnings guidance provided to analysts and rating agencies. The Committee's review and discussion of earnings press releases may be done by the Committee generally (i.e., the types of information to be disclosed and the type of presentation to be made) and need not occur in advance of each earnings release or each instance in which the Company provides earnings guidance.

8) Financial Disclosure Practices. The Committee shall review the appropriateness, not just the acceptability, of the Company's current and proposed financial disclosure practices, including the degree of aggressiveness or conservatism of its accounting principles, and of the underlying management estimates for significant accruals and reserves.

9) Outside Advisors; Investigations; Legal Compliance. The Committee shall have the authority to engage independent legal and other advisors, as it determines necessary to carry out its duties, without obtaining Board approval. The Committee may conduct or authorize investigations into any matter within the Committee's scope of responsibilities. In addition, the Committee shall review the Company's procedures for compliance with laws, and governmental regulations, including, among other things, monitoring the Company's Corporate Compliance Program by meeting with the Company's General Counsel, Chief Corporate Compliance Officer and such other persons as the Committee may determine.

10) Funding. The Committee shall be provided with the appropriate funding, as determined by the Committee, in its capacity as a committee of the Board, for the payment of: (i) compensation to any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services; (ii) compensation to any advisors employed by the

Committee; and (iii) ordinary administrative expenses of the Committee that are necessary or appropriate.

11) Risk Assessment and Management. The Committee shall discuss policies with respect to risk assessment and risk management, including guidelines and policies to govern the process by which risk assessment and risk management is undertaken. The discussions undertaken by the Committee shall include the Company's major financial risk exposures and steps taken by Company management to monitor and control such exposures.

12) Internal Audit Function and Review. The Company's internal audit function shall be reviewed and evaluated by the Committee on a regular basis. Such review shall include, among other things, the staffing, policies, and procedures for the internal audit department, as well as any significant internal audit findings and management's responses thereto. In addition, the Committee shall provide periodic feedback on the performance of the Company's Chief Financial Officer, internal auditors, Chief Corporate Compliance Officer, and other financial managers to the Chief Executive Officer or the Compensation Committee of the Board, as appropriate.

13) Separate Meetings; Information and Communication. On a periodic basis, the Committee shall meet separately with management, the internal auditor and the independent auditor. In addition, the Committee shall facilitate communications among non-Committee directors, management, the internal auditor, and the independent auditor.

14) Review of Section 10A Reports. The Committee shall review all reports required to be submitted by the independent auditor pursuant to Section 10A of the Exchange Act.

15) Former Auditor Employee Hiring Policy. The Committee shall set hiring policies for employees or former employees of the independent auditor.

16) Confidential Treatment of Complaints. The Committee shall establish procedures for: (i) the receipt, retention and treatment of complaints received by Company regarding accounting, internal accounting controls, or auditing matters; and (ii) the confidential, anonymous submission by employees of the Company of concerns regarding accounting or auditing matters.

17) Code of Ethical and Business Conduct. The Committee shall review and discuss with management the code of ethical and business conduct established by the Company. The Committee shall review and approve: (i) any change or waiver in the code of ethical and business conduct for directors and officers (including the Company's Chief Financial Officer and its Controller and persons performing similar functions); and (ii) any disclosure required to be made under any rules adopted by the Securities and Exchange Commission regarding such change or waiver.

18) Review and Training. The Committee shall review various financial areas of the Company (e.g., operational finance, reimbursement, management information systems, and disaster plans) as a means of expanding the Committee's knowledge and understanding of the Company's operations and its business and financial risks, and in order to provide ongoing training to the Committee's members.

19) Committee Performance Oversight. The Committee shall conduct on an annual basis a performance evaluation and review of the Committee.

20) Committee Charter Evaluation. The Committee shall review and assess the adequacy of this Charter on an annual basis and shall recommend any proposed changes to the Board for approval.

21) Committee Member Qualifications. The Committee shall evaluate and review on a regular basis Committee member qualifications, appointment and removal and Committee structure and operations, including the authority to delegate to subcommittees.

#### **IV. REPORTING.**

The Committee shall report to the Board on a regular basis, outlining its activities since the previous meeting. This report shall discuss any issues that arise with respect to the quality or integrity of the Company's financial statements, the Company's compliance with legal or regulatory requirements, the qualifications, performance and independence of the Company's independent auditors, the performance of the Company's internal audit function, any specific findings observed by the Committee, any actions the Committee has taken, the Committee's plans for future meetings, and such other matters the Committee shall determine necessary or desirable.

#### **V. OTHER.**

While the Committee has the responsibilities and powers set forth in this Charter, the role of the Committee is oversight and it is not the duty of the Committee to prepare the Company's financial statements, to plan or conduct audits of those financial statements, to determine that those financial statements are complete and accurate and in accordance with GAAP, or to determine that disclosures have been properly made. This is the responsibility of the Company's management and the independent auditor.

#### **VI. COMPLIANCE.**

All actions of the Committee and all power and authority granted by this Charter are subject to any restrictions and obligations which may be contained in the Company's Certificate of Incorporation or Bylaws, the Exchange Act and other applicable laws, rules and regulations.

#### **Committee Members**

Eugene Marini

Alfredo Jurado

Marcelo Llorente