

Declaration by the Board of Management of  
Fresenius Medical Care Management AG  
and by the Supervisory Board of  
Fresenius Medical Care AG & Co. KGaA  
on the German Corporate Governance Code  
in accordance with Art. 161 German Stock Corporation Act (AktG)

The Supervisory Board of Fresenius Medical Care AG & Co. KGaA and the Board of Management of its General Partner (hereinafter referred to as the "Board of Management") declare that the recommendations of the "German Corporate Governance Code Government Commission", published by the Federal Ministry of Justice in the official section of the electronic Federal Gazette in the version as of June 18, 2009 have been and are being met. The Supervisory Board of Fresenius Medical Care AG & Co. KGaA and the Board of Management intend to consider the recommendations of the German Corporate Governance Code in the future, as well. The following recommendations are the only ones not been or being applied:

**Code clause 3.8**  
**"Deductible for Supervisory Board in D&O policy"**

According to clause 3.8 para. 2 of the Code, a deductible must be agreed upon in any D&O policy for the Supervisory Board equivalent to the mandatory minimum deductible implemented for the Management Board by the German Act on the Appropriateness of Management Board Remuneration (VorstAG). Such deductible amounts to 10% of the loss up to at least the amount of one and a half times the fixed annual compensation. Fresenius Medical Care's current D&O policy is a group policy for a multitude of persons, which does not provide for a deductible in the recommended amount. With the next regular renewal of the D&O policy a deductible will be agreed for the Management Board of Fresenius Medical Care Management AG as of July 1, 2010, which does comply with the requirement of the German Act on the Appropriateness of Management Board Remuneration (VorstAG). It is resolved to implement an equivalent deductible for the Supervisory Board as of July 1, 2010.

**Code Clause 4.2.3 para. 4**  
**"Severance Payment Cap"**

According to clause 4.2.3 para. 4 of the Code, in concluding Management Board contracts, care shall be taken to ensure that payments made to a Management Board member on premature termination of his contract without serious cause do not exceed the value of two years' compensation (severance payment cap) and compensate no more than the remaining term of the contract. The severance payment cap shall be calculated on the basis of the total compensation for the entire past financial year and if appropriate also the expected total compensation for the current financial year. The employment contracts with the members of the Management Board that have been newly executed as of the beginning of the year 2010 also do not contain severance payment arrangements for the case of

premature termination of the contract without serious cause. Such severance payment arrangements would be contrary to the concept practiced by Fresenius Medical Care in accordance with the German Stock Corporation Act, according to which employment contracts of the members of the Management Board are, in principle, concluded for the period of their appointment. Therefore, a premature termination of the employment contract in principle requires a serious cause.

**Code clause 5.1.2 and 5.4.1**

**“Age limit Management and Supervisory Board”**

According to clause 5.4.1 of the Code attention shall be paid to an age limit to be specified for the members of the Supervisory Board in proposals for the election of members of the Supervisory Board. Similarly, according to clause 5.1.2 of the Code an age limit shall be specified for members of the Management Board. As in the past, Fresenius Medical Care will refrain from determining an age limit for members of the Supervisory Board and the Board of Management in the future since this would limit the selection of qualified candidates.

**Code clause 5.4.6**

**“Compensation Supervisory Board”**

According to clause 5.4.6 of the Code, Members of the Supervisory Board shall receive fixed as well as performance-related compensation. The performance-related compensation should also contain components based on the long-term performance of the enterprise. Currently, Fresenius Medical Care pays a fixed compensation to the members of the Supervisory Board only. The introduction of a performance-related compensation to the members of the Supervisory Board, linked to the success of the Company, is currently still under review.

Fresenius Medical Care has complied with the recommendations of the “German Corporate Governance Code Government Commission” in the version as of June 6, 2008 since issuance of the Declaration of Compliance in December 2008, with the divergences declared in December 2008 and December 2009, which referred to the recommendations pursuant to the Code clauses 5.1.2, 5.4.1 and 5.4.6.

In both, composition of the Management Board and nominations for the election of members of the Supervisory Board (Code clauses 5.1.2 and 5.4.1), Fresenius Medical Care will pay attention to diversity also in the future. The international activities of the enterprise currently are already considered by the boards.

Bad Homburg, March 2010

Fresenius Medical Care AG & Co. KGaA  
Supervisory Board and Management Board  
(of Fresenius Medical Care Management AG)

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