



**Declaration by the Board of Management of
Fresenius Medical Care Management AG
and 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 May 26, 2010 have been met since issuance of the previous declaration in June 2011 and will continue to be met. The following recommendations are the only ones that have not been applied and are not being applied, respectively:

**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 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 para. 2 sentence 3
"Age limit Management Board"**

According to clause 5.1.2 para. 2 sentence 3 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 Management Board in the future since this would limit the selection of qualified candidates.

Code clauses 5.4.1 para. 2 and para. 3

„Specification of concrete objectives regarding composition of the Supervisory Board and their consideration in making recommendations to the competent election bodies“

According to clause 5.4.1 para. 2 and 3 of the Code, the Supervisory Board shall specify concrete objectives regarding its composition and recommendations by the Supervisory Board to the competent election bodies shall take these objectives into account. The objectives specified by the Supervisory Board and the status of implementation shall be published in the Corporate Governance Report. Fresenius Medical Care does not comply with these recommendations.

As the composition of the Supervisory Board needs to be aligned to the enterprise's interest and has to ensure the effective supervision and consultation of the Management Board, it is a matter of principle and of prime importance that each member is suitably qualified. When discussing its recommendations to the competent election bodies, the Supervisory Board will take into account the international activities of the enterprise, potential conflicts of interest and diversity. This includes the aim to establish an appropriate female representation on a long-term basis.

However, in the enterprise's interest not to limit the selection of qualified candidates in a general way, the Supervisory Board confines itself to a general declaration of intent and particularly refrains from fixed diversity quotas and from an age limit. As the next regular elections of the Supervisory Board will take place in the year 2016, reasonably a report on implementation of the general declaration of intent can not be made till then.

Bad Homburg, December 2011

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