

**CHARTER FOR THE
NOMINATING AND CORPORATE GOVERNANCE COMMITTEE
OF THE BOARD OF DIRECTORS
OF KYPHON INC.**

(Adopted April 20, 2005)

I. PURPOSE:

The purpose of the Nominating and Corporate Governance Committee of the Board of Directors of Kyphon Inc. is to assist the Board in ensuring that it is properly constituted and conducts itself appropriately in carrying out its duties and meeting its fiduciary obligations, and that the Company has, and follows, appropriate governance standards.

II. COMMITTEE MEMBERSHIP AND ORGANIZATION:

- 2.1 The Nominating and Governance Committee shall comprise no fewer than three (3) members.
- 2.2 The members of the Committee shall meet the independence requirements of Nasdaq and applicable federal securities laws and rules and regulations of the SEC, as may be amended from time to time.
- 2.3 Committee members shall be appointed by the Board and shall serve until their successors are duly qualified and appointed. The Committee's chairperson shall be designated by the full Board or, if not, the Committee members shall elect a Chairman by vote of a majority of the full Committee.

III. STRUCTURE AND MEETINGS:

- 3.1 The Committee chairperson will preside at each meeting and, in consultation with the other members of the Committee, will set the frequency and length of each meeting and the agenda of items to be addressed at each meeting.
- 3.2 The Committee shall maintain written minutes of its meetings, which minutes shall be filed with the minutes of the meetings of the Board.
- 3.3 The Committee will meet as frequently as needed each year to fulfill its responsibilities.
- 3.4 The Committee may act through Unanimous Written Consent.

IV. COMMITTEE AUTHORITY:

The Committee shall have the authority to conduct the following activities, as it deems appropriate, from time to time. In exercising its authority, the Committee shall

have the authority to obtain advice, reports or opinions from internal or external counsel and expert advisors.

A. Responsibilities Regarding Board Composition

In accordance with the “Procedures for Identification and Evaluation of Nominees” set forth below, the Committee may:

- 4.1 Identify, evaluate and recommend to the Board qualified nominees (i) for election to the Board at the annual meetings of stockholders or (ii) to fill Board vacancies that may occur between such meetings.
- 4.2 Retain, reasonably compensate and terminate any search firm for performing director candidate searches; take into account, as deemed appropriate, candidate recommendations from other directors, management and/or stockholders.
- 4.3 Evaluate and, if appropriate, recommend stockholder nominees for election to the Board.
- 4.4 Consider the performance of incumbent members of the Board in determining whether to recommend that they be nominated for reelection.
- 4.5 Evaluate and make recommendations to the Board concerning the appointment of directors to Board Committees and the selection of Board Committee chairs.
- 4.6 Evaluate and recommend termination of Board or Committee membership of individual directors in accordance with the Company’s and Board’s governance principles, for cause or for other appropriate reasons.

B. Responsibilities Regarding Corporate Governance

- 4.7 Monitor the independence of the Board and its Committees.
- 4.8 Review the Company’s corporate governance principles and recommend changes to the Board as deemed necessary.
- 4.9 Generally advise the Board on relevant emerging corporate governance matters for incorporation into the Company’s policies and procedures.
- 4.10 Oversee any necessary orientation of new directors; evaluate and, as appropriate, recommend continuing education for new and/or incumbent directors.
- 4.11 Oversee a Board and Committee performance evaluation process, which may include surveying director observations, suggestions and preferences, as deemed appropriate.
- 4.12 Periodically review the Company’s contributions to or for political causes or to or on behalf of political entities, such as PACs.

- 4.13 Periodically review the status of the Company's communications and relations with state and federal governments, governmental agencies and their agents and representatives.
- 4.14 Oversee the Company's compliance activities, including those activities related to its Code of Business Conduct & Ethics not otherwise delegated to either the Audit Committee or the Compensation Committee and the Company's other policies, including the Insider Trading Policy and the Expense Reimbursement Policy, and conduct an annual review of the Compliance Program, Compliance Committee and Compliance Officer.

C. Other Committee Functions & Administration

- 4.15 Review this Charter annually and recommend any proposed changes to the Board for adoption.
- 4.16 Form and delegate authority to subcommittees as deemed necessary or appropriate.
- 4.17 Perform such other functions and exercise such other powers as authorized from time to time by the Board or as may be deemed necessary or convenient by the Committee in the efficient discharge of the foregoing Duties.

V. PROCEDURES FOR IDENTIFICATION AND EVALUATION OF NOMINEES:

The Committee's criteria and process for identifying and evaluating the candidates that it selects, or recommends to the full Board for selection, as director nominees, are as follows:

- 5.1 The Committee shall review the qualifications of any candidates who have been properly brought to the Committee's attention. Such review may, in the Committee's discretion, include a review solely of information provided to the Committee or may also include discussions with persons familiar with the candidate, an interview with the candidate or other actions that the Committee deems proper.
- 5.2 The Committee shall consider the suitability of each candidate, including the current members of the Board, in light of the current size and composition of the Board. In evaluating the qualifications of the candidates, the Committee considers many factors, including, issues of character, judgment, independence, age, expertise, diversity of experience, length of service, other commitments and the like. The Committee evaluates such factors, among others, and does not assign any particular weighting or priority to any of these factors. The Committee considers each individual candidate in the context of the current perceived needs of the Board as a whole. While the Committee has not established specific minimum qualifications for Director candidates, the Committee believes that candidates and nominees must reflect a Board that is comprised of directors who (i) are predominantly independent, (ii) are of high integrity, (iii) have qualifications that will increase overall Board effectiveness, and (iv) meet other

requirements as may be required by applicable rules, such as financial literacy or financial expertise with respect to audit committee members.

5.3 Candidates properly recommended or nominated by stockholders will be evaluated by the Committee using the same criteria as other candidates.

5.4 After such review and consideration, the Committee selects, or recommends that the Board select, one or more director nominees, either at a meeting of the Committee at which a quorum is present or by unanimous written consent of the Committee.