



HOSPITAL BOARDS HOT TAKES

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Agenda



Board vs. Management

Board's Role

Compliance/Quality/Risk

Sources



- NRC Health – Governance Institute, “The Distinction between management and Governance” 2nd Edition
- Great Boards, Volume VIII, No. 3, Fall 2008
- [Practical Guidance for Health Care Governing Boards on Compliance Oversight \(hhs.gov\)](#)
- [General Compliance Program Guidance | Office of Inspector General | Government Oversight | U.S. Department of Health and Human Services \(hhs.gov\)](#)

Hospital Board: Governance v. Management



The Board

Breaking Down Your Duties



The Board: Setting Strategic Direction



- 1. Set Expectations/Policies regarding the process**
- 2. Set Strategic Plan, Goals and Evaluation Metrics**
(with input from management)
- 3. Hold senior management and the organization accountable for the implementation of items in #2**
- 4. Periodic Review of progress**

The Board: Quality Oversight



- **Moral and ethical obligation to guarantee the organization is doing everything it can to keep patients safe and provide high quality care**
- **Monitor trends**
 - Improved Outcomes
 - Decreased undesirable outcomes
 - Continued consistency with requisite professional knowledge

The Board: Management Oversight



- **The CEO**

- Select
- Specify Expectations
- Evaluate
- Determine compensation & benefits
- Support



The Board: Financial Oversight

- **Fiduciary Responsibility**
- **Tasks:**
 - Approving the annual budget
 - Assuring appropriate investment of capital
 - Assuring sufficient capital
 - Determine fiscal policy
 - Determine policy on the provision of community services



The Board: Board Development



- **Assume responsibility for own effective and efficient performance**
 - Meet legally mandated fiduciary responsibilities
 - Loyalty
 - Care
 - Fiduciary
- **Configuration**
- **Evaluation and Development**
- **Effective and Efficient Board Meetings**

The Board: Community Health and Advocacy



- **Community Health Needs Assessment & plan to address needs**
- **Public Advocacy**
- **Define the board's role in fund development & philanthropy**



Examples of The Board's Role

- **Selection and evaluation of the CEO**
- **Establishing ethical “tone”**
- **Ensure the effectiveness of compliance and risk management programs**
- **Approval of strategic plan**



Examples of The Board's Role



- **Ensuring the integrity and transparency of corporate financial reporting**
- **Monitoring reputational risks, exercising material authority with respect to capital allocation process and strategy**
- **Oversight of financial plan and monitoring thereof**
- **Material involvement in the establishment of board agendas, developing internal governance processes and protocols, recruiting and retaining board members, pursuing formal executive succession and talent development**

Management's Role Examples



- Operate the day-to-day management of the company & personnel
- Development and implementation of the strategic plan
- Recommendation to the board with respect to capital allocation
- Maintain the corporate compliance program
- Identify, analyze, and respond to operational risk
- Prepare accurate and transparent financial statements
- Develop annual operating plans and budgets
- Select qualified management and establish organizational structure
- Execute material talent development and succession initiatives
- Develop organizational crisis management procedures

In its
simplest
form:

Figure 1: The Board-Management Relationship

Board's Roles	Management's Roles
Select, evaluate, and support the CEO.	<ul style="list-style-type: none">— Run the organization in line with board direction.— Keep the board educated and informed.— Seek the board's counsel.
Approve high-level organizational goals and policies.	<ul style="list-style-type: none">— Recommend goals and policies, supported by background information.
Make major decisions.	<ul style="list-style-type: none">— Frame decisions in the context of the mission and strategic vision, and bring the board well-documented recommendations.
Oversee management and organizational performance.	<ul style="list-style-type: none">— Bring the board timely information in concise, contextual, or comparative formats.— Communicate with candor and transparency.— Be responsive to requests for additional information.
Act as external advocates and diplomats in public policy, fundraising, and stakeholder/community relations.	<ul style="list-style-type: none">— Keep the board informed, bring recommendations, and mobilize directors to leverage their external connections to support the organization.

Questions to ask when the lines are not clear

Seven Questions:

- Is it **BIG**?
- Is it about the **FUTURE**?
- Is it **CORE** to the **MISSION**?
- Is a high-level **POLICY** needed to resolve the situation?
- Is a **RED** flag flying?
- Is a **WATCHDOG** watching?
- Does the **CEO** need the board's **SUPPORT**?

How to be clear on this with the public?



- **When hearing information from employees/providers:**
 - Have you taken your concern through the “chain of command”?
 - Have you discussed with the relevant stakeholders?
 - Have you proposed your solutions to administration?
- **When hearing concerns/information from the public:**
 - As you know, I cannot act alone, but I will have someone from administration get ahold of you.
 - Can I help in scheduling a sit down with administration?

COMPLIANCE QUALITY RISK



A critical element of effective oversight is the process of asking the right questions of management to determine the adequacy and effectiveness of the organization's compliance program, as well as the performance of those who develop and execute that program, and to make compliance a responsibility for all levels of management.

Expectations for Board Oversight of Compliance Program Functions

- **A Board must act in good faith in the exercise of its oversight responsibility for its organization, including making inquiries to ensure:**
 - (1) a corporate information and reporting system exists and
 - (2) the reporting system is adequate to assure the Board that appropriate information relating to compliance with applicable laws will come to its attention timely and as a matter of course.



“Boards should pay attention to the Commission's Guidelines because federal courts consult when determining criminal sentences. Corporate boards also have a fiduciary duty of care, which requires that boards assure that “information and reporting systems exist in the organization that are reasonably designed to provide to senior management and to the board itself timely, accurate information to allow management and the board, each within its scope, to reach informed judgments concerning ... the corporation’s compliance with the law” In re Caremark, 698 A.2d 959, 970 (Del. Ch. 1996).

Tools for creating Compliance Programs



- **Tools:**
 - Federal Sentencing Guidelines (Guidelines)
 - OIG's voluntary compliance program guidance documents
 - OIG Corporate Integrity Agreements (CIAs)
- Baseline assessment tools for Boards and management in determining what specific functions may be necessary to meet the requirements of an effective compliance program.
 - OIG has required some settling entities, such as health systems and hospitals, to agree to Board-level requirements, including annual resolutions

Finger on the Pulse



- Boards should develop a formal plan to stay abreast of the ever-changing regulatory landscape and operating environment. The plan may involve periodic updates from informed staff, or a review of regulatory resources made available to them by staff.
- Board members may also wish to take advantage of outside educational programs that provide them with opportunities to develop a better understanding of industry risks, regulatory requirements, and how effective compliance and ethics programs operate.
- Boards may want management to create a formal education calendar that ensures that Board members are periodically educated on the organizations' highest risks.

Defining Compliance



- Organizations should define the interrelationship of the audit, compliance, and legal functions in charters or other organizational documents.
- The structure, reporting relationships, and interaction of these and other functions (*e.g., quality, risk management, and human resources*) should be included as departmental roles and responsibilities are defined.

Functions to be Defined:



Compliance
Function



Legal
Function



Human
Resources




Internal Audit



Quality
Improvement

Knowledge & Access

- 
- Boards should be aware of, and evaluate, the adequacy, independence, and performance of different functions within an organization on a periodic basis.
 - To operate effectively, the compliance, legal, and internal audit functions should have access to appropriate and relevant corporate information and resources.

Roles to Address Risk

Boards should also evaluate and discuss how management works together to address risk, including the role of each in:

1. identifying compliance risks,
2. investigating compliance risks and avoiding duplication of effort,
3. identifying and implementing appropriate corrective actions and decision-making, and
4. communicating between the various functions throughout the process.



Setting Expectations



- The Board should set and enforce expectations for receiving particular types of compliance-related information from various members of management.
- It may be helpful and productive for the Board to establish clear expectations for members of the management team and to hold them accountable for performing and informing the Board in accordance with those expectations.
 - The Board may request the development of objective scorecards that measure how well management is executing the compliance program, mitigating risks, and implementing corrective action plans.

Quality Dashboards & Reports

- Board quality committees can work with management to create the content of the dashboards with a goal of identifying and responding to risks and improving the quality of care.
- Risk-based reporting system, in which those responsible for the compliance function provide reports to the Board when certain risk-based criteria are met.



Review & Audit Risk Areas



- The Board should ensure that management consistently reviews and audits risk areas, as well as develops, implements, and monitors corrective action plans.
- Recent industry trends should also be considered when designing risk assessment plans.
- Boards of entities that have financial relationships with referral sources or recipients should ask how their organizations are reviewing these arrangements for compliance

Executive Sessions = Open Communication

- The board may want to consider conducting regular “executive sessions” (i.e., excluding senior management) with leadership from the compliance, legal, internal audit, and quality functions to encourage more open communication.
- Scheduling regular executive sessions creates a continuous expectation of open dialogue, rather than calling such a session only when a problem arises. This is also helpful to avoid suspicion among management about why a special executive session is being called.



**CLOSED
SESSION**

Executive Sessions = Open Communication

- Areas of particular interest include:
 - referral relationships and arrangements
 - billing problems
 - e.g., upcoding, submitting claims for services not rendered and/or medically unnecessary services
 - privacy breaches
 - quality-related events.
- Board members should ask their own management teams whether there are controls and processes in place to reduce the risk of, and to identify, similar misconduct or issues within their organizations.





QUESTIONS?