

Defining Governance Excellence

Fundamental Roles and Responsibilities

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Introduction

Hospital and health system governing boards do not become excellent by chance. They build performance excellence by purposefully practicing leadership “habits” that function synergistically and consistently to ensure high performance governing effectiveness.

Boardroom Basics for New Trustees: Fundamental Roles and Responsibilities is the result of over two decades of Walker Company work with hospital and health system governing boards to improve their governance effectiveness. It includes trustee responsibilities that, if practiced consistently, will help to ensure that trustees perform their critical leadership accountabilities with a high level of accountability, trust and expertise.

The roles and responsibilities are outlined in this document in eight areas:

- Ensuring achievement of the mission, vision and values
- Strategic thinking and direction setting
- Relationship with the CEO
- Consistent compliance
- Advancement of quality and patient safety
- Financial fitness
- Knowledge growth
- Community connections

Each of these roles and responsibilities is a part of every board member’s fiduciary duty, which is outlined on pages 3-5.

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Board Members' Fiduciary Duties

Fiduciary responsibilities and their related issues of accountability and trust are complex. Trustees have a two-way responsibility: they must act in the best interests of both the hospital and the communities their hospital serves.

Board members must take particular care to become thoroughly informed before making a business decision. They must put the needs of the hospital first when taking responsibility for its operations; and they must abide by laws, regulations and standards of hospital operations.

These three main responsibilities are referred to as the Duty of Care, the Duty of Loyalty, and the Duty of Obedience.

The Duty of Care. When engaging in hospital business, trustees must use the same level of judgment they would use in their own personal business activities.

- Obtain necessary and adequate information before making any decision
- Use the same level of judgment exhibited in personal business activities
- Act in good faith
- Make decisions in the best interest of the hospital
- Set aside personal interests in favor of those of the hospital

Each trustee should be familiar with the hospital's programs and services, ensure the active promotion of the hospital's mission, and maintain a focus on the achievement of its strategies and objectives. The Duty of Care is fulfilled by:

- Consistent attendance at board and committee meetings
- Attentive and introspective preparation for board meetings
- Obtaining and reviewing relevant data and information before voting to ensure evidence-based decisions
- Asking probing questions and challenging status quo thinking to ensure the information needed to make prudent decisions
- Exercising independent judgment

Trustees have a two-way responsibility: they must act in the best interests of both the hospital and the communities their hospital serves.

Defining Governance Excellence

Fundamental Roles and Responsibilities

- Periodic examination of the performance of the executives and trustees who lead the organization
- Meaningful review of the organization's finances and policies

The Duty of Loyalty. The Duty of Loyalty bars trustees from using their board positions to serve themselves or their businesses. It requires that when acting in their fiduciary capacity, trustees place the interest of the hospital before all else. It demands that board members be:

- Objective and unbiased in their thinking and decision-making
- Free from external control and without posterior motives
- Free of any conflict of interest when discussing issues and making decisions
- Able to observe total confidentiality when dealing with hospital matters

Board members must protect the limited resources of the hospital to ensure optimal services and benefit to the community.

To identify potential conflicts of interest, trustees should annually disclose in writing any known financial interest with any business entity that transacts business with the hospital or its subsidiary businesses. The Duty of Loyalty is carried out by:

- Full disclosure of potential conflicts of interest
- Consistently placing the needs of the organization before personal interests
- Compliance with the organization's conflict of interest policy
- Avoidance of the use of corporate opportunities for personal gain or benefit
- Maintaining confidentiality when required

The Duty of Obedience. The Duty of Obedience requires board members to be faithful to the hospital's mission, and to follow all state and national laws, corporate bylaws, rules and regulations when representing the interests of the hospital.

Board members must protect the limited resources of the hospital to ensure optimal services and benefit to the community. They must ensure legal compliance with all applicable laws and regulations. The Duty of Obedience is carried out by:

- Strict adherence to the bylaws of the board and to the mission of the hospital
- Making decisions guided by the hospital's mission, and in compliance with the scope of its governing documents
- Compliance with all regulatory and reporting requirements
- Understanding of all documents governing the board and its operation (bylaws, articles of incorporation, board and committee job descriptions, organizational charters, etc.)
- Ensuring that decisions further the organization's mission and comply with the scope of its governing documents
- Carefully following executive compensation practices

Roadblocks to Fiduciary Effectiveness

Strong boards are independent-minded, curious and able to focus on what matters most. Their members are willing to challenge status quo thinking and stretch themselves intellectually. Weak boards are complacent and submissive. Their members do not ensure that all sides of issues are considered, or that "conventional wisdom" is challenged. Such weak boards are not likely to successfully carry out their fiduciary responsibilities.

There are two roadblocks to any board's ability to maintain fiduciary effectiveness. These are 1) a tendency toward "rubber stamping;" and 2) a tendency toward micromanagement. Both are most likely to occur when a majority of members lack interest, drive or the ability to speak from the shadow of one or more overbearing board members.

- **Rubber stamping.** Members of rubber stamping boards fail to ask pertinent questions or engage in deliberative dialogue on solutions to challenges, and do not work successfully together to arrive at independent-minded decisions. They accept recommendations with little questioning or debate, and fail to explore alternatives and scenarios that may reveal the weaknesses of arguments or positions.

Rubber stamping boards are often a result of overly dominant individuals and weak board chair leadership. A strong board chair will ensure that every board member meaningfully engages in constructive thinking and deliberation on the important issues that come before it. From a legal standpoint, individual members of a rubber stamping board may be considered negligent and liable for their actions or inactions, and maybe held personally liability for lack of adequate oversight.

- **Micromanagement.** It's often a challenge for board members to see the fine line between management and governance. Board members must understand that they are expected to be leaders and overseers, not managers and implementers. They should be concerned with the "what," not the "how." Micromanagement is a term generally applied to boards that pay too much attention to details, and not enough attention to the "big picture" strategic issues and implications.

It's up to every trustee to guard against micromanagement. The board chair should ensure that board members understand their roles and consistently adhere to them. In addition, the CEO needs to be willing to candidly discuss problems of micromanagement with the board to work out board-driven solutions to this problem.

The bottom line: Board members must act in such a manner that protects both hospital operations and the community's trust.

Ensuring Achievement of the Mission, Vision and Values

Trustees must ensure that the hospital has meaningful, unique, market-specific and compelling mission, values and vision statements. These should inspire and lead employees, physicians, trustees, volunteers and other stakeholders to the highest levels of achievement.

Trustees are ultimately responsible in every way for the hospital's long-term success in meeting the health care needs of the people it serves. The mission, values and vision statements are the foundation of a solid strategic focus. Trustees are responsible as the "keepers" of these critical success factors. They must ensure that these statements are unique, meaningful, powerful and compelling, and that they help solidify organizational thinking when confronted with a multitude of potential pathways to the future.

These statements should be at the forefront of board decision-making, and at the top of trustees' minds as they develop strategic plans, recruit physicians, plan for programs and services, determine community needs, and advocate for legislative and regulatory change that will benefit the community.

Trustee Roles and Responsibilities

Trustees are ultimately responsible in every way for the hospital's long-term success in meeting the health care needs of the people it serves.

1. Ensure that mission, values and vision are clearly understood and are central to all discussions and decision-making
2. Ensure that the mission, values and vision drive the hospital's long-term strategies, objectives and action plans
3. Understand clearly the evolving health care environment and community needs
4. Focus time and attention on future-oriented strategic thinking about the hospital's challenges and issues
5. Focus on trends and strategic priorities, not operational details
6. Reject "status quo" thinking, and value innovative new approaches and ideas
7. Promote a culture of innovation in board practices, and throughout the organization
8. Ensure that the board takes time during meetings for "mission moments," opportunities to reflect on the ways in which the hospital is carrying out its most important work
9. Ensure that two important questions are always asked at board meetings: "How will this action, activity or decision further our ability to achieve our mission?" "Has the work we've done during this meeting advanced our ability to achieve our mission?"
10. Ensure that the organization's mission, values and vision are integrated into every employee-related process: hiring, performance evaluation, criteria for promotion, awards, and dismissal

Strategic Thinking and Direction Setting

Hospital and health system trustees face governance challenges that continually test their skills, creativity and leadership. Today's health care environment requires confident, highly skilled, forward-thinking strategic leaders who consistently exhibit the leadership qualities essential to governance and organizational success.

Strategic trustees clearly understand market trends and major issues, and their future implications for the organization. These trustees serve as a "bridge" to the community and are active, participative leaders in the boardroom. The most highly effective trustees are able to consistently and successfully navigate through the myriad of complexity that makes up today's turbulent, rapidly changing health care environment.

The major functions of high performance trustees include a steady emphasis on mission, values, vision and strategies, education and performance improvement, and an ability to build trust-based relationships with key constituencies. Paramount is the ability to lead change.

The most highly effective trustees are able to consistently and successfully navigate through the myriad of complexity that makes up today's turbulent, rapidly changing health care environment.

Trustee Roles and Responsibilities

1. Prepare thinking for purposeful participation in strategic discussions
2. Ask critical strategic questions, and engage in vibrant dialogue that challenges conventional thinking
3. Ensure focus on discussion and decisions regarding strategy in the areas most critical to the organization's success
4. Focus on strategic-level discussion and decision making (what's coming vs. what's happened)
5. Be strategic thinkers and strategic leaders, rather than strategic planners
6. Ensure a continual flow of new information, new ideas and new knowledge that drive new strategic assumptions
7. Monitor progress toward the achievement of strategic objectives, and ensure that timely modifications to direction are made, when necessary
8. Consider various futures that may develop, and understand that there are no "straight lines to the future." Scenarios tell where the organization may be in the future, and what actions may be necessary to succeed in various environments
9. Be familiar with the planning data and assumptions that form the foundation of the organization's strategic plan
10. Avoid "purpose wandering," the tendency to wander into work that is operational, not strategic
11. Govern through "strategic gap analysis" that highlights the most important areas requiring attention
12. Rely on evidence, not anecdote and "best guesses" when making decisions
13. Focus on outcomes not processes
14. Expect new insights and new ideas to emerge at every board meeting

Relationship with the CEO

Hospital CEOs and trustees must build and sustain vibrant, trust-based relationships in order to successfully navigate the opportunities and challenges in today's complex and fast-paced health care world. That trust requires leadership excellence in a number of key areas, including clear and consistent communication, adherence to well-defined roles and responsibilities, and clear CEO performance expectations and accountabilities that are appropriately rewarded using responsible compensation assessment policies and procedures.

Hospital CEOs and trustees must build and sustain vibrant, trust-based relationships .

Trustee Roles and Responsibilities

1. Understand the CEO's operational responsibilities
2. Ensure that both the board and CEO have mutually-agreed-upon goals and expectations
3. Consistently support the CEO in the pursuit and implementation of board-improved objectives, acting as a partner for success
4. Do not interfere with the CEO's operations management role; work with the CEO with a sense of purpose focused around attainment of the organization's mission, values and vision
5. Evaluate and compensate the CEO using defined expectations and performance targets tied to achievement of the mission, values, vision and strategic objectives

Consistent Compliance

Ensuring compliance is not a simple task. Hospital regulating authorities are many, including but not limited to the Joint Commission, the Office of Inspector General (OIG), the U.S. Department of Health and Human Services/Centers for Medicare and Medicaid Services (DHHS/CMS), the Internal Revenue Service (IRS), Department of Justice (DOJ), bond rating agencies, and state regulating authorities. Trustees must be adept at understanding what their accountabilities are and how to best maintain oversight and monitor organizational performance, not only to ensure organizational success and viability, but also to minimize risk and best serve patients.

To effectively oversee the organization's compliance at all levels, trustees need to be knowledgeable about both the structure and the operations of the compliance program, and ensure the components of a sound compliance program are in place. Trustees must be prepared to exercise their independence by staying well-informed on issues with potential implications for the organization. Trustees armed with a clear understanding of their fiduciary duties, including "reasonable inquiry," and who are engaged, active and accountable board participants, should be able to manage governance risk and ensure rigorous compliance with all laws and regulations.

Trustee Roles and Responsibilities

Trustees should be able to manage governance risk and ensure rigorous compliance with all laws and regulations.

1. Understand the most critical risks facing the organization, and how the compliance program is addressing them
2. Make reasonable inquiry and act to ensure the organization's compliance with all state, federal and other governing regulatory and reporting requirements
3. Understand the organization's compliance processes, code of ethics and policies promoting compliance with laws and regulations, such as whistleblower protections, document retention, and fundraising policies, and the goals of compliance
4. Understand how the organization's policies and procedures address compliance risk areas, and the internal controls that counter vulnerabilities
5. Be aware of significant regulatory and industry developments affecting the organization's risk, and how the compliance program is structured to address those risks
6. Make decisions guided by the organization's mission, vision and values, and in compliance with the scope of its governing documents
7. Ensure the existence of a board-improved quality and patient safety plan designed to ensure compliance with applicable state, federal and local regulatory and statutory requirements and Joint Commission standards for ensuring quality and safety
8. Ensure that compliance reporting is consistently enabled, and that individuals making complaints are not retaliated against
9. Ensure that compliance audits are conducted, and effective corrective action plans are implemented
10. Monitor progress and outcomes of the compliance effort to ensure successful compliance, minimizing exposure to risk for both the organization, the board and individual trustees

Advancement of Quality and Patient Safety

Quality and patient safety is trustees' number one responsibility. The board sets the quality tone for the organization, which includes setting quality and patient safety guidelines and priorities and dedicating the resources necessary to provide appropriate, effective, safe care. This requires a unique partnership between the board, the medical staff, hospital leaders and all hospital employees.

Trustees' "quality literacy" regarding patient safety, clinical care and health care outcomes will help ensure the board focuses its energy in the right areas.

Trustee Roles and Responsibilities

1. Ensure that quality and patient safety are "infused" throughout all governance discussions
2. Pay close attention to the development of quality measures and reporting requirements
3. Expect executive updates regarding quality initiatives and associated legal issues
4. Be all well aware of emerging quality issues, challenges and opportunities
5. Ensure that the organization has clear quality and patient safety improvement strategies, and that quality and safety performance are consistently monitored
6. Be well educated about the infrastructure of patient safety, quality and performance measurement
7. Ensure that adequate resources are devoted to quality and patient safety improvement
8. Ensure that quality and patient safety improvement are core organizational strategies
9. Ensure that appropriate resources are in place to consistently develop a competent, high-quality patient care workforce
10. Ensure that discussions of quality result in greater overall organizational performance and higher clinical quality performance
11. Ensure that the organization has approved quality and patient safety standards and measures for patient services provided through contractual arrangements with others affiliated with the organization

Quality and patient safety is trustees' number one responsibility.

Financial Fitness

The board is responsible for the financial success of the hospital. In order to carry out this fundamental fiduciary responsibility, trustees must have a firm grasp of the indicators of the hospital's financial health, and be knowledgeable about key financial interrelationships. A key responsibility is determining the hospital's financial goals and monitoring its operations to ensure the attainment of those goals.

Trustees must clearly understand the assumptions upon which the hospital's budget is based. The board's financial planning direction and decisions should flow out of the hospital's long-range strategic planning initiatives.

Trustees must have a firm grasp of the indicators of the hospital's financial health, and be knowledgeable about key financial interrelationships.

Trustee Roles and Responsibilities

1. Exercise "reasonable inquiry" by asking penetrating questions about financial issues during board meetings
2. Identify and approve targets for important measures of financial and operating performance
3. Ensure that financial reports highlight major trends and stimulate creative discussion
4. Use financial performance reports to modify assumptions and shift resources, as necessary
5. Define financial goals in a variety of key areas, including growth, debt capacity, return on equity and other areas that define financial success
6. Ensure that financial and operational implications and corrective measures are developed by management
7. Exercise broad authority to protect the limited resources of the organization
8. Actively encourage philanthropic support
9. Ensure that adequate capital is available to fund the organization's highest priority strategies

Knowledge Growth

What trustees needed to know in the past is no longer sufficient in today's health care world, where governance "knowledge capital" is one of a hospital's most valuable assets. Trustees who want to be true governance knowledge leaders must prepare themselves by continuously improving their governance knowledge in order to deliver penetrating, insightful leadership that their communities want and deserve. Trustees need to be able to make sense out of very complex issues and possibilities. That sense making requires a strong grounding and awareness.

Trustees must be fully-prepared to understand critical issues, and make evidence-based vs. "gut"-based decisions, and develop the knowledge capital the board needs to ensure that the right decisions will be made, using meaningful information and data. This will result in better decisions based on better knowledge and insights; an improved capacity to be a well-informed advocate for the hospital and its community; increased capacity to engage in challenging and productive governance dialogue; and an ability to think beyond "conventional wisdom."

Trustees must be fully-prepared to understand critical issues, and make evidence-based vs. "gut"-based decisions

Trustee Roles and Responsibilities

1. Ensure access to the information and intelligence needed to lead with purpose
2. Consider well thought-out strategic options and alternatives from management and board colleagues prior to defining a strategic course of action
3. Have a clear and comprehensive understanding of the implications of a rapidly changing health care environment
4. Be familiar with the planning data and assumptions that form the foundation of the organization's strategic direction
5. Develop a solid grounding and awareness of critical issues and trends, and their impact on the organization

Community Connections

Hospital trustees are trusted leaders in their communities. They also have a unique and powerful role as key communicators of the benefit provided by their hospital. Because they are volunteers, they are viewed as unbiased, impartial protectors and stewards of the hospital's cherished mission, values and vision.

Trustees should actively engage in meaningful community partnerships, lead the design of community health improvement initiatives, and engage in community dialogues that promote the hospital's efforts and demonstrate the hospital's genuine interest in the health care needs and challenges of the community.

Trustees have a unique and powerful role as key communicators of the benefit provided by their hospital.

Trustee Roles and Responsibilities

1. Ensure that stakeholders' and constituents' needs, interests and viewpoints are assessed when developing goals and strategies
2. Ensure that the organization's plans and priorities are well communicated to the community's stakeholders
3. Have a clear understanding of the most important community health needs and issues identified through the community health needs assessment
4. Provide an active and visible organizational presence to various groups
5. Communicate the hospital/health system's benefit and value to the community, enhancing community loyalty and confidence in the organization

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