

ABOVE BOARD



Health Care Boards: Who Will Serve?

By Edward A. Kazemek and Michael W. Peregrine

Imagine the following advertisement:

HELP WANTED

Looking for someone willing to assume a position of tremendous responsibility overseeing an organization in one of the most complex industries in America. Significant time demands preparing for and participating in numerous board and committee meetings. Ongoing education on multiple subjects required, including attendance at weekend retreats. Subject to intense scrutiny by the public, physicians and, possibly, the state attorney general's office. Little to no pay. Advancement opportunities comprise becoming a board officer and doing more of the same.

Such a notice may appear far-fetched at first, but in an age of "corporate responsibility," triggered by scandals in both the for-profit and not-for-profit sectors that have stepped up demands for better board performance, it fairly represents what the public expects of hospital and health system board members. Board service may always have been a choice someone made for altruistic reasons and/or personal satisfaction. Absent corrective action, however, we fear that the increased time demands, legal pressures, and liability concerns will make it more difficult to recruit and retain top-notch, qualified individuals for board service.

Growing Pressure

In the pre-DRG "good old days," board service did not require much heavy lift-

ing. Management pretty much ran things, and serving on a hospital board was more an honorary or social post for most board members. While such a relaxed approach might not have been what the law intended, no one really cared. Those days are now a distant memory. Consider the following realities:

- The majority of board members spend an average of anywhere from 120 to 200 hours a year preparing for and participating in board and committee meetings and conducting a meaningful self-evaluation at least every other year. That is equivalent to 15 to 25 work days!

- The Governance Institute, San Diego, reports that board members spend an average of 20 hours each year on health care education, with many required to spend two or three times that amount.

- Boards are expected to become more deeply involved and knowledgeable about quality of care and patient safety, dealing with statistical comparisons of hospitals and physicians that appear in the local newspaper or on the Internet.

- Although not aimed directly at not-for-profits, the Sarbanes-Oxley Act has caught the attention of health care boards, especially regarding financial oversight and conflict-of-interest policies and procedures. Inevitably, director conduct will be subjected to a higher level of scrutiny in a post-Sarbanes environment, even though the core legal standards have not changed.

- State attorneys general often "leverage" director conduct as a means of effect-

ing settlements favorable to the state.

- The cost of director/officer liability insurance is increasing at the same time that the scope and availability of such coverage is decreasing.

Offsetting the Pressure

The good news is that public policy is clearly in favor of not-for-profit charities governed by voluntary boards. Directors should be reminded of this basic fact. In addition, the best way to alleviate some of the growing pressures boards are experiencing is to put everything on the table—i.e., governance structures, policies and practices. In essence, view today's realities as an opportunity to reinvent the organization's governance function.

High-performing boards have found the following to be helpful:

- Get rid of time-wasting agenda items, especially those allowing management to read Power Point reports to the board that trustees have already received.

- Use the Internet to communicate with and among board members and to send out reading and educational materials so members can control when and how they respond to the information.

- Trust the various committees' work and refrain from rehashing/rethinking what they have done. If the board cannot do this, then question the original need for, and/or composition of, the committees.

- Invest significant resources in board education and make it an enjoyable, stimulating experience. Bring in dynamic

speakers on relevant subjects and encourage board members to attend outside conferences. Some boards have encouraged spouses or significant others to participate in these activities in order to turn a hardship into a pleasant experience.

- Spend time creating an effective board culture that fosters effective group dynamics, minimizes interpersonal tensions and dysfunctional behavior in the boardroom, and encourages board members to be more assertive in their oversight duties.

- Although difficult to do, ask non-performing board members to leave. Their presence on the board is a barrier to truly effective governance and an insult to those board members who are committed to doing their best.

On the legal side, consider the following practices:

- Involve the general counsel directly

in the board briefing process and in preparing information to be presented to the board. Have counsel conduct periodic briefings on fiduciary duty and legal compliance matters.

- Adopt and update governance policies to provide clear guidance to the board on how to address oversight issues related to major transactions and operations.

- Confirm the scope and effectiveness of the board's conflict-of-interest policies and procedures.

- Ensure that the corporation's D&O liability insurance policies, and director indemnification procedures offer the maximum protection afforded under state corporate law.

- In those cases where it may be desirable, consider reasonable compensation for board members consistent with state law.

A Stitch In Time

Many boards—from those in stand-alone hospitals to large health systems—are beginning to feel as if they are in a pressure cooker. Board leadership and executive management need to act now to turn down the heat before the quality of and enthusiasm for board service is diminished. Voluntary board service should be an enjoyable and relatively low-risk activity.

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*Reprinted with permission from Trustee • September 2003
Volume 56 • Number 8 • Published by Health Forum • Printed in U.S.A.*

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