

The Governance Institute

The Board's Role in Assuring Institutional Integrity



Webinar

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Today's Presenter



Pamela R. Knecht, president of **ACCORD LIMITED**, has provided consulting services to a wide range of industries and organizations over her 28-year career. She currently focuses on assisting boards and CEOs of not-for-profit hospitals and health systems with governance assessment, restructuring, and development; strategic planning; organizational diagnosis and change management; team effectiveness; and physician–hospital collaboration.



Presentation Overview

1. Define “institutional integrity”
2. Explain integrity-related pressures on boards
3. Link “integrity” to the board’s fiduciary duties
4. Explore conflict of interest and independence
5. Review boards’ compliance oversight duties
6. Address community benefit reporting, executive compensation, and transparency
7. Provide integrity recommendations for boards



The Regulatory Concern

- “The tax-exempt community is under a microscope...and increasingly skeptical environment...that is not as willing as before to extend the benefit of the doubt. Moreover, it is an environment in which some are questioning whether the...benefits that tax-exempt organizations are providing are commensurate with the...tax subsidies they receive.”

Steven Miller
Commissioner, Tax Exempt and Government Entities
Internal Revenue Service
October 2007



The Regulatory Benefit of Transparency

- “The perspective is that ‘good governance’ serves to emphasize the importance of transparency and accountability in maintaining the public’s confidence in the integrity of individual organizations and of the tax-exempt sector as a whole.”

Sarah Hall Ingram
Commissioner, Tax Exempt and Government Entities
Internal Revenue Service
June 2009

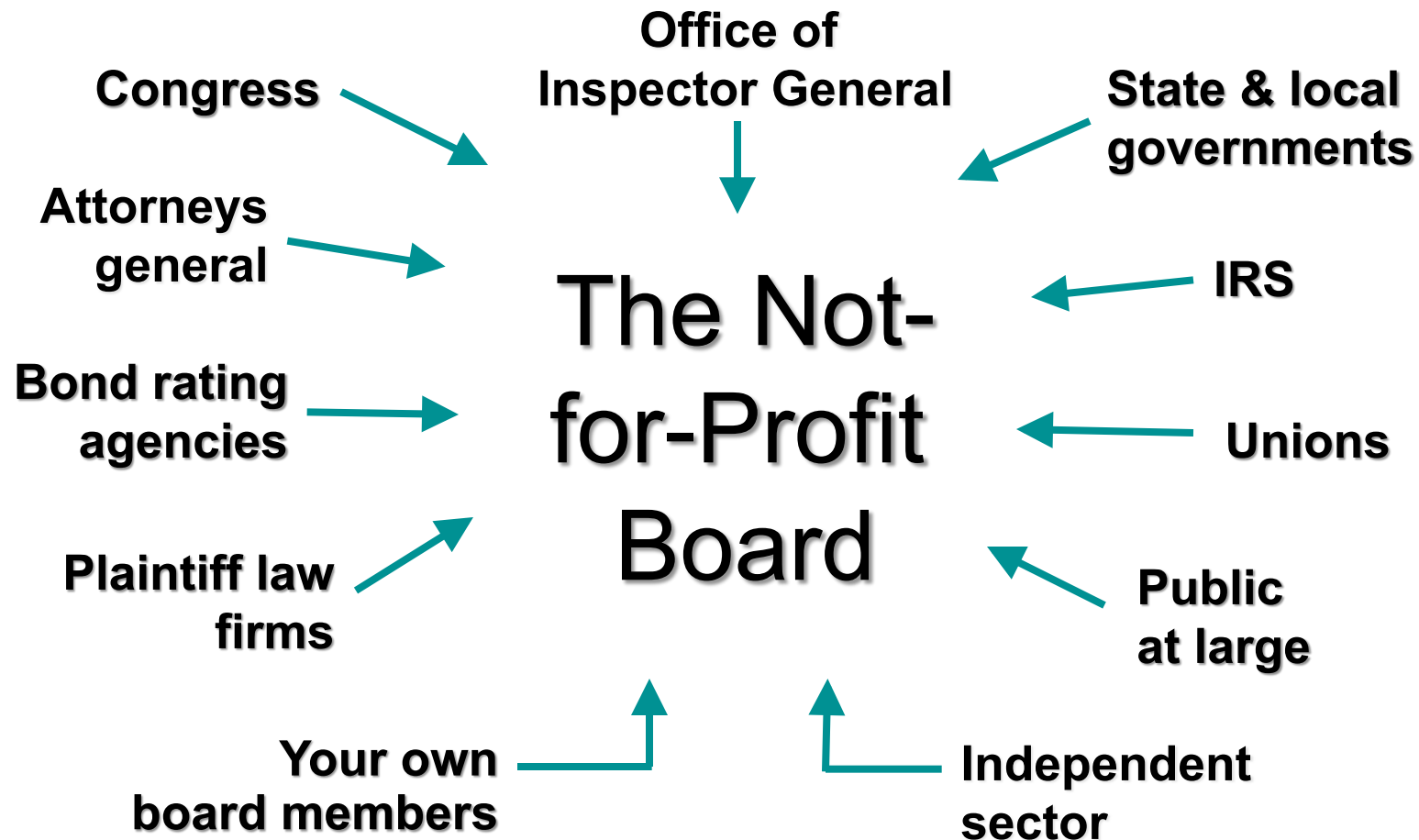


“Institutional Integrity” Goes Further

Transcends mere compliance with the law (e.g., proper disclosures and procedures)

- Calls for a deep focus on mission, stewardship, and ethics
- Embracing ethical behavior beyond that demanded by minimum legal requirements
- Making your policies, practices, and results an open book to your stakeholders
- And, instilling “*institutional integrity*” as a core value

Increased Scrutiny and Pressure





New Reality in an Era of Increased Accountability and Transparency

- *Old Reality*: Not-for-profits enjoyed a public presumption of doing good works for unselfish motives.
- *New Reality*: Not-for-profits must demonstrate transparently that they deserve the public's trust through their community benefits, prudent stewardship, and ethical conduct...

...in other words, ***integrity***



Institutional Integrity Components

- Governance effectiveness
- Conflict of interest/director independence
- Community benefit/tax exemption
- Corporate compliance/audit
- Financial stewardship/executive compensation
- Transparency/accountability
- “Tone at the top”



Fiduciary Duties Reminder

Care

The board must act in good faith with the care an “ordinarily prudent person” would exercise under similar circumstances.

Obedience

The board must ensure that the organization acts consistently with its central purposes as described in its articles of incorporation and the mission.

Loyalty

Discharge duties unselfishly, to benefit only the corporate enterprise and not the directors personally.

This means directors must:

1. Disclose situations with potential for conflicts.
2. Avoid competition with the organization.
3. Refrain from discussing confidential board business with others.



The Board's Liability Protections

- Good faith, mission orientation
- Attentiveness, reasonable inquiry
- Common-sense business judgment
- Disinterest

...hence the focus on ***conflicts of interest***



Conflicts of Interest: What the Law Requires

- A conflict of interest arises when a person has a material interest in a proposed contract or transaction in which the corporation is a party.
- The question is whether the nature of the interest could reasonably be expected to bias the director's exercise of judgment.



Note:

Special “Independence” Factors

- Not the same as conflict of interest
- May have specific state rules
- Sarbanes-Oxley based
- Impacts board, committee composition
- Recognized best practice
- Revised IRS Form 990 definition



“Independent” on IRS Form 990

- Not a compensated employee
- Not an independent contractor who earned more than \$10,000
- No board members, or their families, involved in a “reportable transaction” with the organization



Special Issues Regarding Physicians

- As to conflict of interest
- As to director independence
- To what is the duty of loyalty owed?
- Relates to tax-exempt status
(e.g., IRS community benefit standard)



TGI's Governance Advisors Recommend Being Stricter

- Measurable definitions of “independent”
- Policy regarding physician conflicts/competition
- Majority of the full board is “independent”
- Independent members overseeing compensation & audit
- Non-economic benefits as potential conflicts
- Episodic, in addition to annual, disclosure
- Full board knowledge of potential conflicts
- Creation of “disabling guidelines”



***Sample* “Disabling Guidelines”**

- Deliberate violations of conflict of interest/ confidentiality
- Owner, partner, employee, board member, or investor in a direct competitor of the organization
- Employee of the organization, or a family member, is a senior executive officer for the organization



Note...Community Benefit and Health Reform

- Periodic community needs assessment
- Adoption, implantation, and publicizing of written policies on financial assistance and emergency care
- Limitations on bills to patients who qualify for financial assistance
- Prohibition of “extraordinary collection actions”



Tell a Compelling Community Benefit Story

- Form 990/Schedule H
- Federal tax-exempt status
- State property tax status (Provena)
- Non-profit vs. for-profit status
- Community benefit report



Corporate Compliance/Audit

- Corporate compliance is properly viewed as a key component of institutional integrity; that is, an organizational culture grounded in compliance with law and not a mindless “check the box” response.



Key Aspects of Compliance Plan Transparency

- The plan itself
- The chief compliance officer
- The compliance committee
- 24-hour hotline

Board members are obligated to be knowledgeable and effect a culture of legal compliance.



Executive Compensation Factors

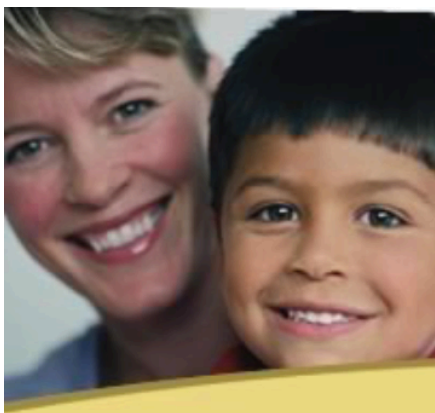
- 2009 IRS Hospitals Report
- Focus on disinterested process
- Continued criticism of compensation levels
- Proposed change to “safe harbor”
- Emphasis on comparability data



Key Aspects of Compensation Transparency

- Compensation philosophy statement
- Compensation committee membership
- Policy of rebuttable presumption
- Board policies
- Full board vs. committee Form 990 review

Ensure Quality Transparency



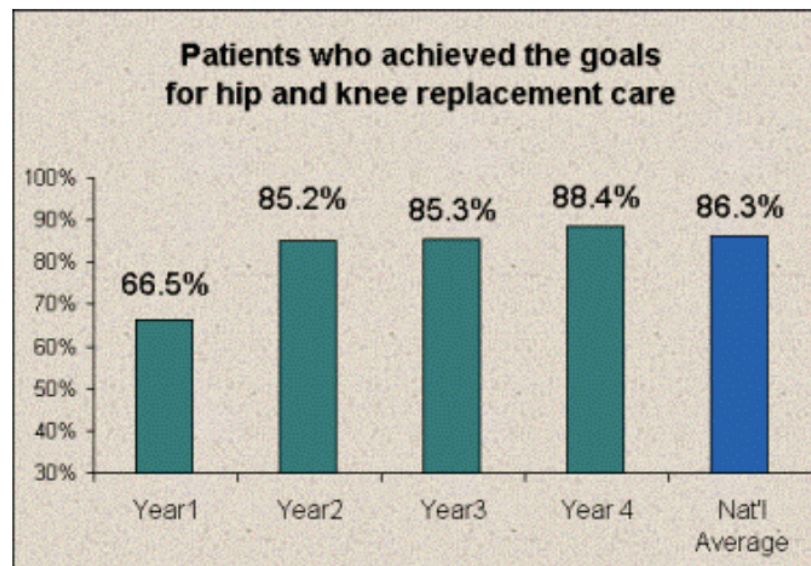
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Year 1: Oct. 1, 2003 - Sept. 30, 2004; Year 2: Oct. 1, 2004 - Sept. 30, 2005;
Year 3: Oct. 1, 2005 - Sept. 30, 2006; Year 4: Oct. 1, 2006 - Sept. 30, 2007

The national average scores are from Oct. 1, 2006 - Sept. 30, 2007.

Use Pricing Transparency



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resources

My Cost

Welcome To My Cost

What you will need

In order to use My Cost and receive the most accurate estimate possible, have the following items (Please contact your insurance provider to obtain this requested information.)

1. Copy of current insurance card
2. Current deductible or HRA/HSA bridge/gap information





IRS Governance “Guidelines”

- Conflict of interest/independence
- Executive compensation
- Investments
- Fundraising
- Governing body minutes and records
- Document retention and destruction
- Ethics and whistleblower
- Financial statements
- Independent audit committee
- Form 990 reporting
- Transparency of organizational and governance information



Governance Transparency

- Board members
- Governance principles
- Board structure
- Board evaluation
- Governance policies



Key Governance Policies

1. Audit and corporate compliance (IRS)
2. CEO goal-setting, evaluation, and compensation (IRS)
3. Quality and safety oversight (JC)
4. Board and committee self-assessment and goal-setting (JC)
5. Code of ethics and whistleblower (IS)



Key Governance Policies

(cont.)

6. Document retention and destruction (IS)
7. Travel and expense reimbursement (IRS)
8. Confidentiality (fiduciary duty of loyalty)
9. Transparency of information (IRS)
10. Loans to directors and officers (IRS)
11. Strategic direction-setting (bond rating agencies)



Priorities for Immediate Consideration

1. Conduct a rigorous review of conflict-of-interest policies and procedures, including adopting “disabling guidelines” and creating a measurable definition for an “independent” director.
2. Revisit the adequacy and transparency of executive compensation oversight. Aspire to practices that meet the IRS “rebuttable presumption of reasonableness” standards.
3. Use emerging industry standards to define, measure, and set goals for community benefit that meet the “value of tax exemption” test. Make sure the organization is telling its story to the community.



Priorities for Immediate Consideration

(cont.)

4. Ensure that the full board understands the Form 990 information that is filed with the IRS and that it meets the highest standards for completeness and accuracy.
5. Assess the organization's public transparency strategy for communicating its quality, safety, prices, and governance policies to the public.
6. Compare the board's structures, composition, policies, and procedures with recommended practices and adopt enhancements. Treat board evaluation, including individual director evaluation, as a priority to continuously improve board performance.



Recent Developments

- “Hadassah” and the issue of personal relationships as conflicts
- Board evaluation of the risk of appearance of conflict
- OIG guidelines on board oversight of compliance
- Pressures on refining the “rebuttable presumption” for executive compensation
- Proposed amendments to the Community Benefit Standard



Questions and Discussion





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