

Kentucky Trustee

For Kentucky Hospital Governing Board Members

Spring 2022

BOARDROOM BASICS

Board Leadership: Finding the Balance Between Macroleadership and Micromanagement

When working together in their roles, the partnership between the board and management can help organizations excel in meeting the community's needs in the best and most efficient way possible. But when the board and management step out of bounds of their respective responsibilities, the result can be detrimental to the organization's leadership, and ultimately for the long-term success of the hospital or health system.

Board member orientation and ongoing education programs often focus on the board's important individual functional responsibilities, such as strategic planning, CEO oversight and compensation evaluation, and quality and patient safety. While these functional responsibilities are essential components of the board's job, equally important is clarity and agreement on the respective roles and responsibilities of the board as it relates to management.

Step 1: Understand the Board's Fiduciary Responsibility

First and foremost, the board must understand its fiduciary responsibility. The fiduciary responsibility is integral

to everything the board does, and should always guide trustee actions, dialogue, and decisions. Board fiduciary responsibilities are comprised of three primary requirements:

- **Duty of Care:** Become thoroughly informed before making a business decision.
- **Duty of Loyalty:** Put the needs of the organization first when taking responsibility for its operations.

- **Duty of Obedience:** Abide by laws, regulations, and standards of the organization's operations.

If a board is to fulfill its duties of care, obedience, and loyalty, it must analyze all sides of an issue, fully debate it, and ultimately come to a conclusion. One board may only ask a few or even no questions about a major proposal by management and then vote it through. Another board may ask many probing questions, some of which might delve into the "management" side of the proposal. Is the first board not fulfilling its duty of care and simply "rubberstamping"? Or is the second board "micromanaging" and creating unnecessarily long meetings?

Step 2: Set Clear Boundaries for Governance and Management

Each board must set its own boundaries for the roles of the board

(Continued on page 3)



PRESIDENT'S NOTEBOOK

The 2022 Kentucky General Assembly was one of the busiest in the Kentucky Hospital Association's history. Luckily, the hard work paid off with great successes for Kentucky's hospitals. KHA secured passage of several key bills during the session:

HB 777 was KHA's priority legislation introduced by Representative Ken Fleming. This EMS reform bill provides EMS workers with an independent licensing board, like nurses and doctors, and moves licensure of ambulance providers back to the Cabinet for Health and Family Services. The bill also removes ambulance service from certificate of need (CON) as it is in 48 other states.

SB 10, sponsored by Senator Robby Mills, establishes major changes to nursing education by removing unnecessary barriers to educating more nurses for the workforce.

The Compassionate Care Act, introduced by Representative Killian Timoney, establishes a 72-hour window during which physicians must review patient test results and formulate a plan for discussing the results in instances where the test could reveal a fatal diagnosis.

HB 364, sponsored by Representative Danny Bentley, MD, allows a facility to apply for a loan of up to \$20 million to reopen within 36 months of closing with up to 50% of the loan being forgivable based on certain job-creation metrics. These loans are exclusively for facilities in counties with a population under 50,000 people.

The KHA advocacy team is already hard at work preparing for the 2023 legislative session and is actively working with Kentucky's congressional delegation on federal issues on your behalf. We are grateful for your support and the time you take discussing legislation with your elected officials so they learn directly from their constituents how their bills impact your communities.

Sincerely,



Nancy Galvagni
President
Kentucky Hospital Association



Nancy Galvagni
President and CEO

Governance Notebook

KHA Establishes Federal Political Action Committee

The Kentucky Hospital Association has formed KHAPAC, a federally registered political action committee (PAC), to allow the committee to directly support federal lawmakers by raising money from individuals associated with KHA and donating funds to political parties and candidates the committee supports. Unlike KHA's state-registered PAC, which was restricted to making donations to state parties and candidates, the federal PAC can support both state and federal parties and candidates.

Discuss this new PAC with your fellow board members and your hospital's administrator to make a plan for a campaign in your facilities.

Do you have ideas for future issues of the Kentucky Trustee?

Our goal is to provide you with the information and knowledge you need to lead your hospitals forward in today's rapidly changing environment. Tell us what you think, and what you would like to see in future issues of the *Kentucky Trustee*.

Write or call:

Ginger Dreyer
Kentucky Hospital Association
2501 Nelson Miller Parkway
Louisville, KY 40223
502-426-6220 or 800-945-4542
gdreyer@kyha.com

Sample Definitions of Board and Management Responsibilities

Creating a table or chart that lists board and management responsibilities in key leadership areas takes the guesswork out of whether the board is doing too much or not enough. Typical responsibility areas hospitals and health systems may want to define include strategy, quality and patient safety, relationship with the CEO, workforce, medical staff credentialing and oversight, financial leadership, community relationships, community health, and organizational ethics. A brief sample in select areas is provided below.

<u>Sample Category</u>	<u>Board Role</u>	<u>Management Role</u>
<i>Strategy: Long-Term Planning</i>	<ul style="list-style-type: none"> • Exhibits leadership in strategic thinking and planning sessions, engaging in robust debate and dialogue about critical issues impacting the organization • Determines strategic directions, including strategic initiatives that address identified needs 	<ul style="list-style-type: none"> • Enables well-informed, data-driven board discussions by providing relevant data, information, and background materials • Develops strategic recommendations, measurable objectives, action plans, and budgets to support and implement strategic goals and direction
<i>Strategy: Short-Term Planning</i>	<ul style="list-style-type: none"> • Ensures progress towards goals through 	<ul style="list-style-type: none"> • Develops and implements plans
<i>Strategy: Day-to-Day Operations</i>	<ul style="list-style-type: none"> • No role 	<ul style="list-style-type: none"> • Makes all management decisions • Develops policies and procedures • Advises board, as appropriate
<i>Community Health: Community Needs Assessment</i>	<ul style="list-style-type: none"> • Ensures a community needs assessment is conducted regularly, in accordance with regulatory requirements • Participates in the needs assessment process as determined valuable by management 	<ul style="list-style-type: none"> • Conducts the community needs assessment and reports results to the board

(Continued from page 1)

and management, and continuously revisit it. Often this issue remains silent even when the roles are blurred or not clearly defined, limiting the board’s effectiveness.

Clearly Define the Role of the Board and CEO. Just like CEOs have job descriptions, every board should have a clearly defined written board member job description. The more specific the descriptions, the less likely for role wandering.

A typical board member job description includes defining the role of the board and listing specific responsibilities of the board in critical areas such as mission and vision, strategic planning, CEO selection and

evaluation, quality of care, medical staff credentialing, financial oversight, community health, and more.

In addition to a board job description, hospitals and health systems can create a table that serves as a guide for greater understanding of board and management roles in these critical areas. Clearly defining the roles ensures that the board and management are the most effective and impactful, working together to complement one another.

Review Board Roles Regularly. At least annually, complete a governance performance assessment with questions that probe the micromanagement issue. Discuss the results and make plans to improve if necessary.

In addition to the annual assessment, best practice boards take five minutes for evaluation at the end of each board meeting to ask the following three questions:

- What did we do well?
- Where could we have done better?
- Did we stay in our lane?

Step 3: Ensure Proper Preparation and Education

Boards may veer toward avoiding questions or wandering into operational details when they aren’t adequately prepared. This can be prevented by providing well-designed board materials in advance, engaging in regular board education, and

ensuring onboarding and mentoring that adequately prepares board members.

Expect the Board to do Their

Homework. Boards that obtain well-developed, concise briefing materials prior to the board meeting and thoroughly prepare will spend less time asking questions. Often, part of the board comes prepared, part of the board skims the material the day of the meeting, and a few board members never even look at the board materials prior to the meeting. Challenge your board to do better.

Challenge your administration to create tight, well-conceived board materials that are available in a timely manner. Time spent creating best practice board packets and boards fully utilizing them dramatically reduces time spent in board meetings discussing issues too “in the weeds.”

Engage in Regular, Robust Board Education. Typically, the board sets the priority for the “what” and management focuses on the “how.” But there are times when the board may need to get into the “how.” For example, a fiduciary responsibility of quality or financial oversight may require some probing questions when a problem is identified.

Building a robust board education program with a deep dive once annually on key issues such as finance and quality can help boards be more

prepared in their thinking and prevent questions on routine oversight activities.

Prepare Agendas Adequately. Richard Chait, Barbara Taylor, and William Ryan’s work on the different governing modes have implications for balancing

Time spent creating best practice board packets and boards fully utilizing them dramatically reduces time spent in board meetings discussing issues too “in the weeds.”

the roles of governance and management. They describe three distinct modes: **Fiduciary**, with a focus on “oversight”, **strategic**, centered on “foresight”, and **generative**, which allows the board to focus on the “insight” it brings to the table.

Board agendas must be balanced with the right mix of oversight,

foresight, and insight items. Overloading an agenda with all oversight items and summary reports may get tedious and feel like the board is “rubber stamping.” At the same time, generative discussions of deeper issues will lengthen the meetings and could be overwhelming, especially to new board members.

When developing board agendas, boards can label each agenda item as “oversight, foresight and insight.” This gives board members a sense of which governing mode they will be in for each item.

Encourage Questions and Mentoring. Board members, particularly new board members, should feel comfortable asking

questions if they do not understand an issue or its complexity. Leaders report board members saying they didn’t ask questions because “I was afraid I would be accused of getting into the weeds.”

High performing boards have mentors who work with new board members outside the meeting to help with this issue. Encouraging new board members to write down their questions during meetings and discussing the questions with their mentors can help overcome the new board member learning curve.

Step 4: Recognize When Deviation is Required

There are some exceptions for when the board discussion may appropriately get more detailed or feel like micromanagement.

The Topic and Board Expertise May Dictate the Depth of Conversation.

Boards may require more or less discussion in a specific area depending on the board’s experience, CEO’s tenure, and the board’s familiarity with the topic. The better the orientation program and ongoing board education,



the less likely that newer board members will feel overwhelmed.

Younger tenured boards will ask many questions about a specific issue. Do not confuse hard questions, a good debate, or long discussion of a complex issue as getting into the weeds. The duty of care may require challenging and probing questions.

Sometimes the CEO Wants Advice.

There may be times when the CEO has a difficult or complex management issue and simply wants advice from the board. This requires trust that the board does not use the opportunity to insert itself into other management issues uninvited.

To start the discussion, it is important to describe it as a non-governance issue and clarify that it will not require a vote. The CEO is opening the management window and inviting the board in to get the collective wisdom of the room. At the end of the discussion, the CEO must make it clear that the management window is closing and the board is moving on to the next governance issue.

Step 5: Constantly Communicate

Board dynamics greatly influence the issue of governance as it relates to management. Really great boards work at it, constantly assessing their performance.

Assign a “Micromanagement Monitor.” Typically the board chair is responsible for constantly assessing the meeting and watching for governance creep into micromanagement. If that is the case, the role should be clearly

Balancing the Roles of Governance and Management

Step 1: Understand the Board’s Fiduciary Duty

- Analysis and debate are critical to fulfilling the fiduciary duty

Step 2: Set Clear Boundaries for Governance and Management

- Clearly define the board and CEO roles in writing
- Review board roles regularly using an annual board self-assessment

Step 3: Ensure Proper Preparation and Education

- Challenge all board members to prepare adequately for meetings
- Engage in continual board education
- Balance agendas with oversight, foresight, and insight items
- Encourage questions and mentoring for new board members

Step 4: Recognize when Deviation is Required

- Newer board members may have more questions
- Don’t confuse questions and debate with micromanagement
- The CEO may simply want advice from the board

Step 5: Constantly Communicate

- Assign a “micromanagement monitor”
- Seek CEO feedback: micromanagement is one of the leading reasons CEOs leave
- Develop a meeting code of conduct

spelled out in the board chair’s job description. Alternatively, boards can assign this monitoring role to someone other than the board chair. The key is that there is at least one board member constantly monitoring the board’s conversation and calling out when the discussion is off track.

Seek CEO Feedback. It can be awkward for the CEO, particularly if he or she is a new CEO, to tell the board that they are getting too involved in the management side. ***No one likes to be micromanaged, and it is one of the leading reasons CEOs leave their hospitals.***

Boards should take the lead in preventing this, asking the CEO to share their thoughts when it feels like

the board is veering from its leadership role. The more trust there is between the board and CEO, the easier it is for the CEO to be honest and direct with the board when micromanagement occurs.

Develop a “Meeting Code of Conduct.” A simple set of guiding principles that describe meeting best practices can help boards stay in governance mode and serve as a constant reminder of how the board can follow good practices.

Content for this article was contributed by Todd C. Linden, a partner of Linden Consulting, advisor for governWell™ and CEO Emeritus of Grinnell (Iowa) Regional Medical Center.

Preparing for New Cybersecurity Threats

In March 2022, President Biden warned about increased cyber attacks from Russia against the United States as a result of the war in Ukraine. As a critical part of the nation's infrastructure, hospitals and health systems must respond to his call: "If you have not already done so, I urge our private sector partners to harden your cyber defenses immediately by implementing the best practices we have developed together over the last year."

While boards don't need to know the exact details of the cybersecurity best practices outlined by the Cybersecurity & Infrastructure Security Agency (CISA) and the Federal Bureau of Investigation (FBI), boards do need to understand the threat and their role in mitigating the risk.

Before Russia invaded Ukraine, the risk for cyber attacks on hospitals and health systems was already growing. According to the American Hospital Association (AHA) and the Department of Health & Human Services (HHS):

- In the fourth quarter of 2021, more than 550 health care organizations suffered a data breach.
- There is a strong positive correlation between ransomware attacks and negative patient outcomes, according to a recent report from the Ponemon Institute.

Enterprise-Wide Risk

Hospitals and health systems must consider the potential for cyber attacks as an "enterprise risk," or a risk that spans all the major facets of the organization. HHS warns hospitals of only considering their electric health

records at risk. Instead, hospitals should implement risk management strategies that are comprehensive, including understanding where all electronic protected health information exists across the organization.

What Should Boards Be Asking?

Boards and senior leaders must work closely to continually monitor, prepare for and respond to shifting cybersecurity threats. Questions boards should be asking today include:

- Does our board fully understand the cybersecurity risk to our organization? Have we assessed our exposure and security risks, and do we have goals for how to address those risks?
- Has our board allocated appropriate resources to respond to and mitigate the risk?
- Is cybersecurity ranked as an enterprise-wide risk?
- How often are cybersecurity updates provided to the board?
- What board committee has oversight over cybersecurity? Does this committee's engagement need to change?

AHA: What Hospitals Should Do Right Now

The AHA recommends that hospitals and health systems immediately:

- **Ensure that everyone is aware of the increased threat.** Hospitals and health systems must be prepared so that they don't become victims.
- **Identify** all internal and third-party mission-critical services and technology.
- **Put in place business continuity plans** and well-practiced downtime procedures in the event those technologies are disrupted.
- **Ensure resilient back-ups are in place**, checking the redundancy and security of the organization's network and data back-ups. There should be multiple copies, including an offline copy and a copy that is immutable (unchangeable).
- **Ensure emergency electricity generating redundancy** is in place and has been tested.
- **Update and document the cyber incident response plan**, which includes emergency communication plans and systems.

More at www.aha.org/cybersecurity.

Source: American Hospital Association Cybersecurity Advisory. March 21, 2022. and AHA Transformation Talks. Cybersecurity: Embracing a Leadership Imperative. April 18, 2022. www.aha.org/transformation-talks.

BOARDROOM BASICS

Preventing Conflict of Interest: Keeping Hospital Interests at the Forefront

Conflicts of interest can pop up even within the most well-intentioned and committed board. Maintaining strong conflict of interest policies and procedures ensure open and honest dialogue that keeps the interests of hospital and health systems front and center.

Hospital and health system board members are often involved with other organizations in the community. While this wide range of business and personal relationships brings a depth of experience and expertise, it also has the potential to introduce real or perceived conflicts of interest.

What is a Conflict of Interest?

A conflict of interest exists when a board member, senior leader, or employee has a personal or business interest that may be in conflict with the interests of the hospital or health system. A “red flag” should be raised anytime the personal or professional concerns of a board member affects his or her ability to put the welfare of the organization before personal benefit.

Conflicts of interest are usually unintentional, and in some cases no conflict exists but the perception of a conflict can be just as detrimental.

Examples of conflicts may include:¹

- A board member has direct financial or personal ties to an outside organization that seeks to

enter into a business arrangement with the hospital or health system.

- A board member has a family member who publicly advocates for legislation which the hospital or health system is taking an advocacy position.
- A board member holds a public office while maintaining a voting position on a hospital or health system board.

Preventing Conflicts of Interest

The best way to prevent conflicts of interest is to have clear policies and procedures in place to both prevent real or perceived conflicts, and to address conflicts when they do occur.

Ensure a Clear Conflict of Interest Policy.

A board policy clearly defines what a conflict of interest is, how conflicts should be declared, and how conflicts

are addressed. It is the first line of defense to ensure that expectations are clear and the hospital or health system is prioritized when personal dilemmas occur.

Provide Board Education. Board onboarding and education should include information about conflict of interest, and what it means to be “independent.”

Encourage Self-Monitoring. For “self-monitoring” to be effective, it is critical to have a clear policy in place and tools for board members to use to either declare a conflict of interest or to request consideration about whether a fellow board member has a potential conflict of interest. When this happens, the process of determining potential conflicts becomes less personal, and instead is simply a part of the board’s standard processes and procedures.

Set Expectations for Physicians.

Physicians and other clinicians offer valuable knowledge and expertise to the board, but they may also bring significant conflicts depending on their employment and role on the hospital’s medical staff. Clinicians serve on the board as individuals rather than representing the entire medical staff,



What's Included in a Conflict of Interest Policy: IRS Instructions

- **Statement of purpose**—An overview of the purpose of the policy, including protecting the organization's interests.
- **Definitions of who the policy addresses**—Who the policy applies to, including board and committee members and others.
- **Financial interest**—The definition of when a person has a financial interest.
- **Procedures**—Details of the procedures included in the policy, including a duty to disclose, determining whether a conflict of interest exists, procedures for addressing the conflict of interest, and what to do when violations of the policy occur.
- **Records of proceedings**—What's included in the minutes of all board and committee meetings.
- **Compensation**—Details about what voting members may and may not do related to compensation.
- **Annual Statements**—The requirement that all board members sign an annual statement acknowledging receiving, understanding, and agreeing to abide by the conflict of interest policy.
- **Periodic Reviews**—Organizations must conduct periodic reviews of specific components of the conflict of interest policy to ensure the organization's tax-exempt status is not jeopardized.
- **Use of Outside Experts**—Outside experts may be used for periodic review of the policy, but if they are used, they do not relieve the governing board of its responsibility to ensure that proper periodic reviews are conducted.

Source: Instructions for Form 1023. Internal Revenue Service. <http://www.irs.gov/pub/irs-pdf/i1023.pdf> . Rev. January 2020.

and must place the interests of the organization ahead of their own.

Ensure a Proper Process when Selecting New Board Members. When governance candidates are interviewed, they should be asked about any potential conflicts prior to their appointment to serve on the board. Although conflicts may not necessarily disqualify a candidate, the candidate's willingness to talk candidly about and fully consider potential conflicts they may have should play a key role in the nominating committee's decision.

Annual Declarations. Every board member and senior leader should annually complete a conflict disclosure statement. While the conflict of interest policy defines what a potential conflict is, the disclosure statement is the mechanism for individuals to declare any potential conflicts they may have.

Addressing Conflicts When they Arise

Conflicts of interest may arise when they have already been disclosed, or may appear after a conversation or decision has taken place.

If a conflict arises that has been disclosed through the annual disclosure statement, the board meeting minutes should reflect the conflict and describe the action taken. For example, did the board member remove himself or herself not only from the discussion, but from the board room? Did the board continue the discussion and determine their decision was in the best interest of the hospital despite the potential conflict?

Although there are a few exceptions, in most instances the board should not allow conflicted board members to participate in the discussion or vote on any issue where a conflict of interest exists.

The situation becomes more complicated if a conflict becomes apparent that has not been previously disclosed. Unknown conflicts can arise during board meeting discussion or after a board meeting. The key is to communicate, and be honest. If the conflict can be addressed at the board meeting, the board can decide how to proceed and note the decision in the meeting minutes. If the conflict is realized or communicated after a board meeting, the board must decide how to address the conflict and take a re-vote if necessary.

Sources and More Information

1. Conflicts of Interest: A Primer for Healthcare Trustees. Healthcare Trustees of New York State. December 2019.
2. Instructions for Form 1023. Internal Revenue Service. <http://www.irs.gov/pub/irs-pdf/i1023.pdf> . Rev. January 2020.
3. Price, Nicholas J. Healthcare Boards & Evaluating Conflicts of Interest. Diligent Insights. September 11, 2019.
4. Stock, Deb. Overcoming 10 Barriers to Effective Governance. AHA Trustee Services. May 14, 2018. <https://trustees.aha.org>.