

The Guide  
to Good Governance  
for Hospital Boards

*The American Hospital Association's*



**CENTER FOR  
HEALTHCARE  
GOVERNANCE™**



# The Guide to Good Governance for Hospital Boards

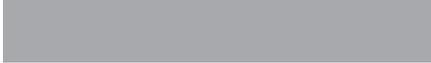
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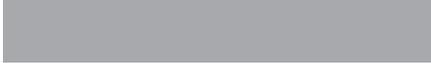
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### Acknowledgements

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# Introduction to the Guide

The AHA's Center for Healthcare Governance is a community of board members, executives and thought leaders dedicated to advancing excellence, innovation and accountability in health care governance. The Center's mission is to offer new and seasoned board members, executive staff and clinical leaders a host of resources designed to progressively build knowledge, skills and competencies tailored to specific leadership roles, environments and needs. To help fulfill its mission the Center is pleased to provide *The Guide to Good Governance*, a resource for U.S. hospital boards and leaders adapted from the original Canadian version developed by the Ontario Hospital Association.

The Guide contains a comprehensive overview of the key components of good governance practices, as well as templates and tools to support these practices.

The resource materials found in the Guide are intended for use by all hospitals, non-profit, government or for-profit, however, they may need to be adapted to meet the needs of specific

institutions. Hospitals are therefore encouraged to customize the tools and templates to meet their unique needs. It is not expected that hospitals will adopt the Guide in its entirety. Further, hospitals may wish to consult the Guide for different purposes. For example, new board members may utilize the Guide to familiarize themselves with governance practices and processes, while more experienced board members and officers may look to the Guide to supplement their practices in a particular area. The Guide is not intended, nor should it be construed as legal advice. Hospitals concerned about the applicability of specific governance practices to their organization are advised to seek legal or professional advice based on their particular circumstances.

As hospitals continue to improve their governance processes and practices, additional resources will be needed. The Center looks forward to developing further tools, resources and educational programs that will supplement and expand upon the contents of the Guide.

# Corporate Governance and the Duties of Hospital Board Members

## Corporate Purpose

Members of nonprofit health care boards are well advised to understand their fundamental governance responsibilities. In order to discharge those duties effectively, board members must understand the corporation's purpose. Most nonprofit hospitals take advantage of the benefits conferred under § 501(c)(3) of the Internal Revenue Code and obtain tax exemption. To be exempt, under § 501(c)(3), the corporation must be organized and operated for a charitable purpose. Nonprofit health care organizations have a charitable purpose that focuses on preserving the health status of the community the hospital serves. The articles of incorporation or bylaws of the nonprofit corporation should state the organization's corporate purpose. This statement of corporate purpose also is often reflected in corporate mission and/or vision statements developed or adopted by the board(s).

In addition to the charitable purpose required to achieve tax exemption, charitable trust law in many states considers the assets of nonprofit organizations to be held "in trust" for the benefit of the communities they serve. Taken together, these laws require that the nonprofit corporation's purpose focuses on the interests of the community and not on the individual self-interest of any person or group.

## Accountability

Boards of for-profit organizations govern on behalf of shareholders, and the directors know that their primary obligation is to increase shareholder value. Shareholders are likely to hold the directors accountable, if the corporation fails to produce acceptable financial returns.

Although nonprofit corporations do not have shareholders, there are several constituencies that have the authority to hold board members accountable. In most states, the attorney general has the power to enforce the public's interest by making sure that charitable organizations fulfill their charitable purposes under a theory that the assets of nonprofit corporations are charitable assets that can be protected by the state or the community. Attorneys general typically exercise that power by making sure that charitable assets are preserved and are not diverted to a non-charitable purpose.

Some nonprofit hospitals are organized into systems and have "members," such as religious congregations, who hold certain rights or "reserved powers" over the actions of the corporation. These membership rights may allow the member to remove board members if they fail to act in the best interest of the corporation.

Health care providers also are regulated by a variety of federal, state and local government agencies that have significant enforcement tools at their disposal. Government investigations and enforcement actions are costly and embarrassing diversions of corporate resources.

Constituencies of nonprofit corporations, particularly if they are financially distressed, also may include creditor groups. Once a corporation is in the "zone of insolvency" the corporation's board has the additional responsibility to focus on protecting the rights of creditors.

## Legal Duties of a Nonprofit Board Member

Individual board members are fiduciaries of the organization. The duties of a fiduciary are the

highest imposed by law on any person or entity. As fiduciaries, board members must act at all times in the corporation's best interest, ensuring that the organization's resources are used in a reasonable, appropriate and legally accountable manner. Although the board does not generally get involved in the day-to-day operations of an organization, it remains responsible for overseeing management and making key strategic decisions. These decisions include authorizing major financial transactions, hiring and firing the organization's senior officers and high-level employees and ensuring that the organization adheres to its mission and values.

The duties of a fiduciary are generally deemed to include the Duty of Care, the Duty of Loyalty and the Duty of Obedience.

### **Duty of Care — Making Responsible Decisions and Providing Appropriate Oversight**

The Duty of Care requires board members to act in good faith and to use the same degree of diligence, care and skill that a prudent person would use in similar situations or circumstances. The Duty of Care is often said to have two essential obligations.

**Make informed decisions.** The Duty of Care requires board members to make *informed decisions*, that is, those that follow a reasonable effort by the board member to become familiar with the relevant, available facts. Boards should require management to provide complete information upon which to base an informed board decision, and individual board members must take the time to review the information prior to the board meeting. Boards are not required, however, to do their own independent investigation; and the law gives them leeway to rely on information given to them through reports received from management or the hospitals' accountants, lawyers, and other advisors.

**Due inquiry.** Although the board is given latitude to rely on information presented by management and its advisors in discharging its first "due care" obligation to be informed, due care also requires

board members to make *due inquiry*. This means directors are expected to ask questions if they learn facts that raise issues about the validity or completeness of the information presented to them. Due inquiry does not mean that the board must engage in independent fact-finding or otherwise go outside the boardroom to gather information. Board members must dig deeper however, if they know of facts, learned inside or outside of the boardroom, that call into question the validity or completeness of the information presented by management.

**Business judgment rule.** The courts of virtually every state further protect the actions of directors through the *business judgment rule*, which provides that a director will not be held personally liable if he or she makes an informed decision, in good faith, without self-interest, and in the best interests of the corporation. The business judgment rule focuses on process rather than on the content of a board decision. Even if a court in hindsight, believes the board's decision to be "substantively wrong," courts are reluctant to impose liability if the board's decision-making process was rational and followed in good faith.

The Duty of Care focuses on whether the board has made a good faith effort to be "informed and exercise judgment." As evidence of good faith, courts will examine whether the board assured that an adequate corporate information and reporting system existed. Failure to do so may render individual board members liable for loss caused by non-compliance with the law.

### **Duty of Loyalty — Avoiding Conflicts of Interest or Self-Interest**

The Duty of Loyalty requires board members to protect the corporation's business interests and to refrain from deriving personal gain to the corporation's detriment. This means that a director must act in good faith and without self-interest when making decisions for the corporation. The Duty of Loyalty includes a board's obligation to avoid impermissible conflicts of interest, prevents board members from usurping a corporate

opportunity for their own personal gain and requires board members to preserve the confidentiality of the corporation's affairs.

While attention to conflicts of interest safeguards corporations from decisions guided by a board member's self-interest, a board member is not automatically disqualified from serving on a corporation's board simply because he or she conducts business with the organization. Instead, the Duty of Loyalty and its prohibition against impermissible conflicts of interest, governs *how* the corporation and its members should act when a director's business or personal dealings conflict with the interests of the corporation.

Conflicts of interest are not rare and the law in most states permits organizations to conduct business with their board members so long as certain preconditions are met to make sure that the organization's interests prevail in the board's decision-making. These preconditions include: (1) giving the board advance notice that the item in conflict will be considered; (2) disclosing the identity of the director who possesses an interest in the transaction and the nature of that adverse interest; and (3) asking the interested board member to leave the meeting temporarily to allow the board to deliberate and vote on the transaction outside the presence of the interested director. These actions demonstrate the independence of the board and assure that the transaction is fair to the organization.

It is important for hospital boards to adopt a well-defined conflicts-of-interest policy and follow it when making critical board decisions or approving proposed transactions where a director or officer holds a conflicting interest. Further, the Internal Revenue Service has adopted rules applicable to certain transactions that, if followed, will create a rebuttable presumption that the organization and those involved in approving the transaction acted appropriately.

Board independence is not new to nonprofit governance. The requirement that boards be

principally independent has long been required for those nonprofits that seek tax exemption under § 501(c)(3) of the Internal Revenue Code. The IRS has required for many years that boards of tax-exempt entities be composed of a majority of independent, community representatives as a protection against board decision-making that may be tainted by private interest. Allowing time for the board to meet with the hospital's independent auditors or discuss issues in executive session without the influence of management further avoids impermissible conflicts of interest and meets the Duty of Loyalty to the organization.

The Duty of Loyalty also includes the doctrine of corporate opportunity, which means that a director may not take advantage of a business or financial opportunity that reasonably would be of interest to the corporation. If the opportunity could possibly fall within the corporation's current or future plans or activities, the opportunity must first be offered to the corporation or the board member breaches a fiduciary duty to the corporation. An officer or director who assists a competing entity may be found to have breached his or her Duty of Loyalty to the organization.

### **Duty of Obedience**

The Duty of Obedience calls on the board and its members to comply with the requirements of applicable laws, rules and regulations, honor the terms and conditions of the organization's mission, bylaws, policies and procedures, and act at all times within the scope of their authority under the corporation's articles, bylaws and applicable laws. The adequacy of board member efforts to meet the Duty of Care is tested in pursuing the Duty of Obedience.

In the nonprofit arena, the corporate purpose requires the board to do more than focus on the financial health of the organization. The corporate purpose in the nonprofit context requires boards to safeguard the organization's charitable purpose and preserve the hospital's assets held in trust for the

community. Nonprofit corporate board members have a duty to abide by applicable statutes and the organization's articles, bylaws and mission/vision statements in performing their corporate duties and responsibilities. Over the last few years, federal and state governments have increased the focus on nonprofit organizations, especially hospitals. At the federal level this has resulted in significant changes to reporting on IRS Form 990 and the amount of information now required of nonprofit organizations is greatly increased. The new reporting requirements of Form 990 not only impose new obligations on the board to be familiar with the information that is reported but also an opportunity through the process of understanding the information to identify issues for the attention and discussion of the organization's board and management.

Directors of nonprofit organizations also have a duty to act within the scope of their authority as defined by law and by the articles and bylaws of the organization. If a director takes action outside of that authority, he or she may be charged with committing an *ultra vires* act, or an act beyond the power allowed by corporate charter, and this may result in corporate liability to the corporation for damages caused by the director's unauthorized act.

### **Understanding Hospital Accountability**

While it is clear that the board of a hospital is accountable solely to the hospital corporation, understanding to whom the hospital is accountable is more challenging. Hospital corporations are accountable to a number of stakeholders, including patients, employees, the medical staff and others, and each of these relationships has the potential to give rise to some measure of accountability on behalf of the hospital.

One of the challenging tasks for the board of a hospital corporation is to ensure that in any decision coming before the board, the hospital corporation will properly discharge its accountability to its various stakeholders. In some cases, there may be primary and secondary accountability and in other cases the accountability may be in conflict.

A hospital board needs to understand the nature of its relationship with, and obligations to, its stakeholders in order to effectively and appropriately make decisions in the best interests of the hospital.

The fiduciary duties which are owed by a hospital director to the hospital corporation, are among the highest standard of conduct that the law imposes.

### **Religious-Supported Hospitals**

Religious-supported hospitals are those that were founded and supported by a religious organization. A religious hospital is organized and governed in much the same way as any other hospital with two principle exceptions:

1. The members of a religious hospital will usually be representatives of the founding or sponsoring religious order or organization and there may be some governance decisions that are reserved to the members; and,
2. The hospital may be expected to reflect the principles of the denomination through its mission, vision and values and in its operations.

### **Summary**

To fully understand hospital accountability, a board must first be knowledgeable of the various relationships between the hospital and its stakeholders. A board will benefit from spending some time collectively discussing its stakeholder relationships and how they are taken into account when decisions are made.

The board will face the greatest challenges when it is choosing between competing demands for limited resources. It may also be helpful to the board to develop a statement or guideline with respect to hospital accountability.

### **Sample Tools**

The following tools will help you apply the concepts in this chapter to your board's work. These tools are also available online at [www.americangovernance.com](http://www.americangovernance.com).

# Sample Board Accountability Statement for a Community Hospital

*Note: Nonprofit hospital boards may want to consider developing an Accountability Statement that reflects their commitment to fulfilling the hospital's charitable purpose on behalf of the communities the hospital serves. The following statement is intended to be an example that boards should adapt to meet their individual needs.*

## **Board Accountability**

The hospital board is accountable to the hospital and the community for acting consistently with the Articles of Incorporation, the by-laws and applicable law and regulation. The directors exercise the power vested in them in good faith and honesty in order to further the purposes for which the hospital was created and the achievement of the hospital's mission and vision. They must act in the best interests of the hospital, ensuring that the hospital's charitable resources are used in a reasonable, appropriate and legally accountable manner. Directors shall not place themselves in a position where their personal interests conflict with those of the hospital.

Directors establish objectives that are within the capacity of the hospital's resources and act as stewards to ensure the most efficient utilization of the hospital's facilities and resources. In choosing between competing demands for scarce resources, the board recognizes it is accountable to the following:

To the Hospital	For acting consistently with the charitable purpose of the organization as articulated in the Articles of Incorporation, the bylaws, applicable legislation, and the common law. For acting consistently with the non-profit healthcare organization's purpose to improve the health status of the community and fulfilling the mission and vision of the hospital.
To Patients	For safe and efficient, patient and family-centered care.
To Legislative and Regulatory Bodies	For compliance with laws, policies and regulations applicable to the operation of a healthcare organization.
To Staff, Volunteers and Physicians	For a workplace that supports and enables productive relationships and high-quality performance and outcomes.
To Partners	For collaboration which enables the organization to meet its goals and objectives.
To Communities We Serve	For acting to further the community's interest and benefit and to be a steward of community assets.

# Sample Board Policy on Confidentiality

*Note: The following policy is intended to be an example that boards should adapt to meet their individual needs.*

## **Purpose**

To ensure that certain matters which should be confidential to members of the board are not disclosed unless disclosure is authorized by the board.

## **Policy**

Pursuant to the Duty of Loyalty, directors shall not disclose or discuss with another person or entity, the press or the public or use for their own purpose, confidential information concerning the business and affairs of the hospital received in their capacity as directors unless otherwise designated or authorized by the board. Every director shall ensure that no statement not authorized by the board for public comment is made by him or her to the press or public.

## **Application**

This policy applies to all board and non-board committee members.

## **Confidential Information**

1. All information received by a board member in the capacity of a member of the board shall be considered confidential unless otherwise designated by the board.
2. All matters or information that are received by a member of a committee or task force of the board are confidential unless they have been designated as not confidential by the chair of the relevant committee or task force.

## **Procedure for Maintaining Minutes**

1. Minutes of closed or executive sessions of the board or of meetings of committees and task forces of the board shall be recorded by the secretary or designate or if the secretary or designate is not present, by a director designated by the chair of the board.
2. All minutes of closed or executive sessions of the board or of meetings of committees and task forces of the board shall be marked confidential and shall be handled in a secure manner.
3. All confidential minutes shall be marked confidential and shall be handled in a secure manner.
4. No director shall make any statement to the press or the public in his capacity as a director unless such statement has been authorized by the board.

## **Amendment**

This policy may be amended by the board.

Approval Date:

Last Review Date:

# Sample General Principles Regarding Conflict of Interest

*Note: The following document is intended to be an example that boards should adapt to meet their individual needs.*

Conflict of interest is often expressed as a direct or indirect conflict between the personal interest of a director and the fiduciary duties that director owes the corporation. Pursuant to the Duty of Loyalty, a director must avoid situations where the interests of the director will be in conflict with the interests of the corporation.

A “conflict of interest” exists when a director, officer or employee’s private interest interferes in any way, or even appears to interfere, with the interests of the corporation. The director must act in the best interests of the corporation.

A conflict situation can arise when a director, officer or employee takes actions or has interests that may make it difficult to perform his or her work for the corporation objectively and effectively.

Conflicts of interest can arise when a director, officer or employee, or a member of his or her family, receives improper personal benefits as a result of his or her position in the corporation.

A conflict of interest can arise when the director acts for self-interest or a collateral purpose.

Directors have a duty to hold information in confidence and to use it only for purposes of the corporation and not for personal gain.

A director will be in breach of duties owed to the corporation when the director diverts to his or her own use and benefit an opportunity in which the corporation had an interest.

Conflicts are not rare and an organization may conduct business with a board member so long as procedures are met to make sure the organization’s interests prevail in the board’s decision making.

# Sample Board Policy on Conflict of Interest

*Note: The following documents are intended to be examples that boards should adapt to meet their individual needs.*

## CONFLICTS OF INTEREST AND DOCUMENTATION POLICY

### Scope

This Conflicts of Interest and Documentation Policy (“Policy”) applies to all directors and officers of \_\_\_\_\_ (“the [ ]”), a \_\_\_\_\_ nonprofit corporation, and any other person who is in a position to exercise substantial influence over the decisions and affairs of the [ ] (collectively, “Covered Persons”).

### Purpose

The purpose of this Policy is to protect the [\_\_\_\_\_] interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Covered Person or might result in a possible excess benefit transaction (a “Proposed Transaction”). This Policy provides procedures for identifying situations that represent potential conflicts of interest, determining whether a conflict of interest exists and if present, addressing such conflict of interest. Procedures are also provided for periodic reviews to ensure that the [\_\_\_\_\_] is being operated in a manner consistent with its tax-exempt status. This Policy supplements (but cannot replace) any applicable laws governing conflicts of interest applicable to nonprofit organizations.

### Policy

#### Duty to Disclose

If an Interested Person has a Position or Financial Interest in any business or other entity with which the Corporation is considering entering into an arrangement or transaction, the Interested Person must disclose the existence of his or her Position or Financial Interest and all material facts related thereto to the [\_\_\_\_\_] Board of Directors (the “Board”) or Executive Committee as soon as the Interested Person has knowledge of the potential arrangement or transaction, and whenever requested by the Board or the Executive Committee.

#### Determining Whether a Conflict of Interest Exists

After disclosure of a Position or a Financial Interest by an Interested Person, and after any discussion with the Interested Person, the Interested Person (including those Interested Persons who are members of the Board or the Executive Committee) will leave the Board or Executive Committee meeting while the determination of whether a conflict of interest exists in connection with the Proposed Transaction is discussed by the Board or the Executive Committee and voted upon. A Position or a Financial Interest will be considered a conflict of interest only if the Board or the Executive Committee makes such determination. An Interested Person is considered to have a conflict of interest with respect to his or her Compensation if the person receives Compensation from the Corporation and the person’s Compensation is being discussed or reviewed by the Board of Directors or any committee thereof.

## **Procedures for Addressing the Conflict of Interest**

- Prior to any discussion and vote on whether a conflict of interest exists, an Interested Person may make a presentation to the Board or the Executive Committee regarding the Interested Person's Position or Financial Interest. After such presentation, the Interested Person will leave the meeting during the discussion of, and the vote on, the Proposed Transaction.
- The Board or the Executive Committee will undertake appropriate due diligence and inform itself of all material information reasonably available to it and explore all reasonable alternatives to the Proposed Transaction that would not involve the conflict of interest.
- If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or the Executive Committee will determine by a majority vote of the Disinterested Directors whether the Proposed Transaction is (i) in the [\_\_\_\_\_] best interest, (ii) for the [\_\_\_\_\_] own benefit, and (iii) fair and reasonable to the [\_\_\_\_\_]. In conformity with this determination, the Board or the Executive Committee will make its decision as to whether the [\_\_\_\_\_] may enter into the Proposed Transaction.

## **Quorum for Board or Executive Committee Action**

For purposes of the Board or the Executive Committee actions to be taken under these procedures, including the determination of whether a conflict of interest exists, a majority of the Disinterested Directors on the Board or the Executive Committee will constitute a quorum. However, in no case will a single Disinterested Director take any such action.

## **Violations of the Conflicts of Interest Policy**

If the Board or the Executive Committee has reasonable cause to believe that a Covered Person has failed to disclose a Position or a Financial Interest, it will inform the Covered Person of the basis for such belief and afford the Covered Person an opportunity to explain the alleged failure to disclose.

If, after hearing the response of the Covered Person and making such further investigation as may be warranted under the circumstances, the Board or the Executive Committee determines that the Covered Person has in fact failed to disclose a Position or a Financial Interest, the Board or the Executive Committee will take appropriate disciplinary and corrective action.

## **Documentation in Minutes**

The minutes of the Board or the Executive Committee will contain:

- With respect to the determination of whether a conflict of interest exists, the name of the Interested Person who disclosed or was otherwise found to have a Position or Financial Interest in connection with an actual or potential conflict of interest; the nature of the Position or Financial Interest; any action taken to determine whether a conflict of interest was present; and the Board or the Executive Committee's decision as to whether a conflict of interest in fact existed.
- With respect to whether or not the conflict of interest transaction is approved, the names of the persons present for the discussions and vote related to the Proposed Transaction; the content of the discussion;

whether alternatives were discussed that did not involve a conflict of interest; the basis for the determination that the Proposed Transaction was (i) in the [\_\_\_\_\_] best interest, (ii) for the [\_\_\_\_\_] own benefit, and (iii) fair and reasonable to the [\_\_\_\_\_]; and the record of the vote taken in connection with the proceedings.

### **Annual Statements**

Each Covered Person will annually sign a statement that affirms such person:

- has received a copy of this Policy;
- has read and understands the Policy;
- has agreed to comply with the Policy; and
- understands the [\_\_\_\_\_] is exempt from federal income tax and to maintain its federal tax exemption the [\_\_\_\_\_] must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

In addition, each Covered Person will annually complete, sign and promptly return to the Board or the Executive Committee a Disclosure Statement substantially in the form attached hereto. A Covered Person need not disclose Compensation paid to the Covered Person by [\_\_\_\_\_] pursuant to a resolution of the Board.

### **Periodic Reviews**

To ensure that the [\_\_\_\_\_] operates in a manner consistent with its tax-exempt purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, the Board or the Executive Committee will conduct periodic reviews. The periodic reviews will, at a minimum, include the following subjects:

- whether the [\_\_\_\_\_] Compensation arrangements are reasonable, based on competent survey information, and are the result of arm's-length bargaining; and
- whether transactions and arrangements with other entities and individuals conform to the [\_\_\_\_\_] policies, are properly recorded, reflect reasonable payments for goods and services, further the [\_\_\_\_\_] tax-exempt purposes and do not result in private inurement, impermissible private benefit, or in an excess benefit transaction.

### **Use of Outside Experts**

When conducting the periodic reviews provided for above, the Board or the Executive Committee should rely on appropriate outside experts such as attorneys, appraisers, or compensation or other consultants.

### **Definitions**

*Compensation:* wages, commissions, fringe benefits, royalties, honoraria, fees, and any and all other direct or indirect remuneration, as well as gifts or favors that are substantial in nature.

*Debt Interest:* ownership of debt or debt securities owed or issued by an entity or individual, whether secured or unsecured, including without limitation:

- loans, notes, bonds, and debentures, and any other evidence of indebtedness or liability for borrowed money; and
- any rights, warrants or options, or other securities that are exercisable, exchangeable or convertible for or into any of the foregoing.

*Disinterested Director:* a director of the [\_\_\_\_\_] who is not an Interested Person.

*Equity Interest:* ownership of equity securities issued by an entity, including without limitation:

- in the case of a corporation, capital stock;
- in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock;
- in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited);
- any other interest or participation that confers the right to receive a share of the profits and losses of, or distributions of assets of, the issuing entity; and
- any rights, warrants or options, or other securities that are exercisable, exchangeable or convertible for or into any of the foregoing.

*Financial Interest:* a Covered Person has a Financial Interest with respect to a potential arrangement or transaction if the Covered Person, directly or indirectly, through business, investment or a member of his or her Immediate Family:

- has or anticipates acquiring a Debt Interest or Equity Interest with respect to any entity or individual that provides goods or services to, or has any other transaction or arrangement with the [\_\_\_\_\_] , or is negotiating such a transaction or arrangement, if such interest exceeds the lesser of (i) \$100,000 in fair market value, or (ii) 5% of the outstanding debt/debt securities owed/issued by the entity or individual, or equity securities issued by the entity, as applicable; or
- receives or anticipates receiving Compensation from the [\_\_\_\_\_] or from any entity or individual that provides goods or services to, or has any other transaction or arrangement with, the [\_\_\_\_\_] or is negotiating such a transaction or arrangement, and such Compensation, transaction or arrangement is being considered by the Board of Directors or a committee thereof.

*Immediate Family:* a Covered Person's spouse, and the children, grandchildren, great grandchildren, father, mother, sisters and brothers of the Covered Person and the respective spouses of the foregoing.

*Interested Person:* a Covered Person who holds a Position or a Financial Interest. If a Covered Person is an Interested Person with respect to any of the [\_\_\_\_\_] affiliates, he or she is an Interested Person with respect to the [\_\_\_\_\_] and all of such affiliates.

*Position:* a Covered Person holds a Position if the Covered Person or a member of his or her Immediate Family is or anticipates becoming a director, trustee, officer, employee, or agent of, a consultant or advisor to, or the holder of any other position with, any entity or individual that provides goods or services to, or has any other transaction or arrangement with the [\_\_\_\_\_] or is negotiating such a transaction or arrangement.

# Conflicts Of Interest Disclosure Statement

## PERSONAL AND CONFIDENTIAL

**Instructions: In connection with completing this form, please review the Conflicts of Interest and Documentation Policy (“Policy”) of \_\_\_\_\_ (“Corporation”). Terms used in this form with initial letters capitalized and not otherwise defined will have the meaning given to them in the Policy. When providing answers, if there is insufficient space, please complete your answer on a separate sheet of paper and attach to this form. Please submit the completed form to \_\_\_\_\_.**

### Covered Person:

Name: \_\_\_\_\_

Position with the [Corporation/Foundation]: (Check all that apply)

Member of the Board of Directors    Officer    Board Committee Member

Other: \_\_\_\_\_

### Positions and Financial Interests:

Yes    No   Do you or any member of your Immediate Family hold, or anticipate holding, a Position (e.g., director, trustee, officer, employee, agent, consultant, advisor, etc.) with any entity or individual that to the best of your knowledge and belief provides goods or services to, or has any other transaction or arrangement with, the [Corporation/Foundation] or is negotiating such a transaction or arrangement?

Yes    No   Do you or any member of your Immediate Family, directly or indirectly, have, or anticipate receiving or acquiring, a Financial Interest (e.g., debt or equity securities (beyond the threshold listed in the Policy), wages, commissions, fringe benefits, royalties, honoraria, fees, gifts, etc.) with respect to any entity or individual that to the best of your knowledge and belief provides goods or services to, or has any other transaction or arrangement with, the [Corporation/Foundation] or is negotiating such a transaction or arrangement?

**IF YOU ANSWERED “YES” TO ONE OR BOTH OF THE ABOVE QUESTIONS, PLEASE COMPLETE ATTACHMENT A TO THIS FORM.**

### Employer Information (Immediate Family Members):

Yes    No   Does any member of your Immediate Family hold a Position (e.g., director, officer, employee, agent, consultant, advisor, etc.) with the Corporation? If yes, please state his or her name, Position and relationship to you:

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

### Other Interests:

Describe any other relationship, activity or situation which could be construed as placing you in a position where there is a conflict between your personal interests (or those of any member of your Immediate Family) and the interests of the Corporation:

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### Other Relationships:

Please give information if any of the following apply:

- You have a direct business relationship with the organization (other than as an officer, director, or employee) or an indirect business relationship through ownership of more than 35% of another entity;
- You have a family member who has a direct or indirect business relationship with the **[Corporation/Foundation]**;
- You serve as an officer, director, trustee, key employee, partner, or member of an entity (or a shareholder of a professional corporation) doing business with the [Corporation/Foundation];
- You had a family or business relationship with any other officer, director, or key employee of the **[Corporation/Foundation]**.

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### Signature:

*By signing this form, I certify (i) that I have received, read, understand and agree to comply with the Corporation's Conflicts of Interest and Documentation Policy, (ii) that I understand that the Corporation is a tax-exempt organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes and refrain from activities that confer an impermissible private benefit or result in private inurement, (iii) that I agree to report any apparent or potential conflict of interest which may arise subsequent to my execution of this Disclosure Statement, and (iv) that the responses I have provided in this Disclosure Statement are true and complete according to my best knowledge and belief.*

Signature \_\_\_\_\_ Date \_\_\_\_\_

# Conflicts Of Interest Disclosure Statement

## ATTACHMENT A

**Instructions: THIS FORM SHOULD BE COMPLETED ONLY IF YOU ANSWERED “YES” TO ONE OR BOTH OF THE QUESTIONS IN THE DISCLOSURE STATEMENT SECTION ENTITLED “POSITIONS AND FINANCIAL INTERESTS”: If you are disclosing multiple interests, please make the appropriate number of copies of this blank form before completing.**

### Person Holding Position or Financial Interest:

The disclosures made on this Attachment A relate to a Position or Financial Interest held by:

You  Immediate Family member

If an Immediate Family member, indicate his or her name and relationship to you:

Signature: \_\_\_\_\_ Relationship: \_\_\_\_\_

### Entity or Individual With Respect to Which Position or Financial Interest Held:

Information regarding the entity or individual with respect to which the Position or Financial Interest is held:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Nature:

Individual/sole proprietorship  Corporation  Partnership  Limited Liability Company

Trust  Association  Government (or agency or political subdivision thereof)

Other: \_\_\_\_\_

### Position or Financial Interest Held:

Yes  No Is a Position held with the entity or individual? If yes, please check all that apply:

Director  Trustee  Officer  Employee  Agent  Consultant  Advisor

Other: \_\_\_\_\_

Describe duties: \_\_\_\_\_

\_\_\_\_\_

Yes  No Is a Financial Interest held with respect to the entity or individual? If yes, please check all that apply:

Wages  Commissions  Bonuses  Fringe benefits  Fees  Equity/debt ownership/options

Other: \_\_\_\_\_

Yes  No Has the Position and/or the Financial Interest been affected by the provision of goods or services to, or other transaction or arrangement with, the Corporation or, to the best of your knowledge and belief, will such Position and/or Financial Interest be affected by such provision or other transaction or arrangement in the future? If yes, please explain:

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**Political Or Governmental Interests:**

Yes  No To the best of your knowledge and belief, has any member of any federal, state, county or local legislative or administrative body recommended the entity or individual to the Corporation? If yes, please state the legislator's name and office:

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Yes  No To the best of your knowledge and belief, has any administrative aide for any federal, state, county or local legislator recommended the entity or individual to the Corporation? If yes, please state the name and officeholder:

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# Sample Code of Conduct

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

## I. COMMITMENT TO ETHICS AND COMPLIANCE

\_\_\_\_\_ (the “Hospital”) and its Subsidiaries (referred to hereafter as the “System”) are proud of our tradition of ethical and responsible conduct. We expect all officers, employees, members of the System’s Board of Directors, members of the System’s medical staff, independent contractors, consultants and other representatives of the System (collectively, “System Representatives”) to adhere to the highest standards of conduct whenever acting on behalf of the System. Violations of legal or ethical requirements jeopardize the welfare of the System, our System Representatives, our patients, and the communities served by the System.

The President and Chief Executive Officer (the “CEO”) has the authority and responsibility for the implementation of a Corporate Compliance Program. The Code of Conduct (the “Code”) is an essential part of this program. Specifically, the CEO in conjunction with the Chief Compliance Officer shall have the authority and responsibility for compliance with governmental laws and regulations, and shall have the authority to take all necessary actions to foster such compliance. These actions include, but are not limited to:

- Enabling the members of the Board of Directors (the “Board”) to exercise their duties of care, obedience and loyalty in their decision making and oversight activities, by helping to ensure the flow and forthright disclosure of information to the Board;
- Helping to ensure accurate financial reporting, including oversight of the independent auditors contracted by the System, and the overall integrity of the financial reporting process;
- Helping to ensure compliance with fraud and abuse laws when the System transacts business with referral sources; and
- Helping to ensure accurate billings for patient care services.

In turn, System Representatives have the responsibility to bring any situations that appear not to comply with the Code of Conduct to the attention of their respective supervisors or the Chief Compliance Officer.

The Code plays an important role in the System’s Corporate Compliance Program by defining the standards of conduct expected of System Representatives. Adherence to the Code promotes an overall atmosphere of ethical and honest behavior in the performance of our job duties. This atmosphere is fundamental to facilitating compliance with the laws, rules, and regulations that affect the System, and fostering our patients’ and the community’s confidence in the System’s integrity. The Code is not intended to replace, but rather supplement and support, compliance with governmental laws, rules, and regulations, as well as other System policies and procedures, as may be amended from time to time.

The Code provides guidance on how to resolve questions regarding legal and ethical issues and establishes a mechanism for reporting possible violations of law or ethical principles within the System. The guidelines contained in the Code are designed to assist System Representatives in making the right choices when confronted with difficult situations. The System will promote relationships based on mutual trust and respect, and will provide an environment in which individuals may question a practice without fear of adverse consequences. Ultimately, the responsibility for ethical behavior rests with each individual's exercise of independent judgment.

## **II. STANDARDS OF CONDUCT**

### **A. Patient Care Services**

The System's activities encompass, without limitation, patient care services such as the prevention and treatment of illness, as well as education and research. All such activities will be conducted with integrity, compassion, and a concern for human welfare and dignity. System Representatives are expected to make a good faith effort to meet or exceed a standard of exceptional service in a courteous manner. It is expected that every individual coming into contact with the System, whether patient, visitor, employee, physician, student, or volunteer, will be able to enjoy an atmosphere that fosters respect, personal safety and courtesy.

#### **1. Provision of Quality Care**

System Representatives shall follow standards of care based upon the identified needs of the patient without regard to ability to pay. System Representatives shall seek to avoid the provision of services that are medically unnecessary or ineffective. Every reasonable effort should be made to provide high quality health care to patients in an economical manner.

#### **2. Patients' Rights**

System Representatives shall comply with applicable state and federal laws regarding patients' rights. System Representatives shall respect patients' rights and assist patients and/or their legally authorized representatives in understanding and exercising their rights and responsibilities.

The patient is the primary decision-maker with respect to his or her own health care. The patient has the right to accept, forego or withdraw from offered treatment. Information regarding diagnosis, treatment and/or research options and prognosis should be delivered in language that is understood to help ensure that the patient's right to make an informed choice is preserved. System Representatives will work to help protect the rights of patients whose capacity to act as their own advocate is diminished by virtue of age or incapacity. Under certain circumstances, a legally authorized representative may have the right to make decisions related to patient care, including the use of life sustaining treatment. The System will work with such legally authorized representatives.

#### **3. Patient Non-Discrimination and Accommodation of Special Patient Needs**

The System acknowledges and respects individual patient differences, such as personal background, race, color, ethnic or cultural heritage, national origin, religious/spiritual views, communication needs, sex, age, marital status, veteran status, sexual orientation, handicap, and developmental

disability. It is the policy of the System that such differences will be respected in all patient service activities. All patients should be able to expect a high quality of care based on their unique health care needs, with respect for and regardless of, individual differences.

The System recognizes its responsibility to accommodate the special needs of patients and System Representatives with disabilities. The System will make every reasonable effort to comply with local, state and federal laws, rules and regulations that apply to such circumstances. These accommodations will be made in a manner that attempts to respect the dignity of all parties involved.

#### **4. Patient Care Ethics Committee Consultation**

The System recognizes differences of opinion among those who participate in patient care decisions. The System will seek to resolve all conflicts fairly and objectively. Ethics Committee consultation is available upon request.

#### **5. Patient Admission, Transfer, and Discharge**

Patient admission, transfer and discharge shall be properly conducted in an ethical manner and in accordance with applicable local, state and federal laws, rules and regulations. Patients who are in need of the System's emergency stabilizing services shall not be denied services. In an emergency situation, financial and demographic information will be obtained after the immediate needs of the patient are met.

Patients whose specific condition or disease cannot be safely treated in the System shall be properly transferred to an accepting facility. A patient will be transferred to another facility only if his or her medical needs cannot be met and appropriate care is readily available at another facility. The patient may request a transfer to another facility. Such a request will be facilitated when medically appropriate and legally permissible.

#### **6. Privacy of Patient Information**

To provide the best care possible, the System collects health information about our patients, including information related to their medical condition, health history, medications, and family illnesses. It is also necessary to collect certain demographic, financial and insurance information to ensure that the proper parties are billed for the care provided. We recognize the sensitive nature of this information and are committed to maintaining its confidentiality.

## **B. Employee Working Environment**

### **1. Diversity and Equal Opportunity Employment**

The System is committed to equal employment opportunity in the work place. The System seeks a working environment free of discrimination on the grounds of race, color, religion, sex, age, disability, national origin or any other illegal factor. As is consistent with the high regard the System places upon employee satisfaction and respect, the System is committed to abiding by federal, state and local laws, rules and regulations dealing with employment matters.

## **2. System Representative Relief from Participating in Patient Care**

The System acknowledges that a System Representative may request to be relieved from participating in a particular patient's care or treatment in a situation where the prescribed care or treatment presents a conflict with deeply held cultural values, ethical principles or religious beliefs. The System shall help ensure that patient care and treatment are not compromised if such a request is granted.

## **3. Harassment and Workplace Violence**

The System is committed to providing a work environment that is free from all forms of discrimination and/or conduct that can be considered harassing, coercive, disruptive or illegal. Actions, works, jokes or comments based upon an individual's race, color, religion, sex, national origin, ancestry, age, sexual orientation, disability, military or veteran status or any other characteristic protected by law will not be tolerated. System Representatives have a duty to report unlawful harassment or violence of themselves or others. The incident should be reported in accordance with System policies, including without limitation to the System Representative's supervisor, the Human Resources Department, a member of management or the Chief Compliance Officer.

## **4. Drug-Free Workplace**

The System believes that a safe working environment requires that System Representatives be unimpaired by drug and alcohol use. Possession or consumption of alcohol is prohibited while on System premises, except in designated areas when consumption has been authorized in advance, and then only in moderation.

## **5. Workplace Health and Safety**

The System is committed to providing a safe and healthy environment for patients, System Representatives and visitors. The System has implemented policies and procedures, as may be amended from time to time, designed to protect System Representatives from potential workplace hazards and help ensure compliance with occupational health and safety laws and regulations. System Representatives have a responsibility to become familiar with and understand how these applicable policies and procedures relate to their specific job duties. The System has also implemented policies and procedures, as may be amended from time to time, to help ensure compliance with environmental laws and regulations relating to the organization's operations.

## **6. Proper Control of Medications**

The System is legally responsible for the proper handling and distribution of pharmaceutical products. We are responsible for preventing unauthorized access to and misuse of pharmaceutical products. System Representatives may not use medications dispensed by the System's Pharmacy for personal use, unless prescribed in accordance with System policies and procedures, as may be amended from time to time. The unauthorized use of any prescription drug or controlled substance by any System Representative, including drug samples, is strictly prohibited. All System Representatives have a duty to safeguard and help ensure the proper use of prescription drugs and controlled substances maintained by the System in accordance with applicable laws, rules, regulations and System policies and procedures, as may be amended from time to time.

## 7. Use of Resources

It is the responsibility of each System Representative to help preserve the System's assets, including time, materials, supplies, equipment and information. System assets are to be maintained for business and patient care related purposes only.

## C. Business Practices

### 1. Financial Matters

System Representatives shall work to maintain the financial records of the System in an accurate and complete manner.

The System accounting controls will be sufficient to provide reasonable assurance that:

- Expenditures are made with proper approval and authorization;
- All transactions are recorded to help the System prepare financial statements and account for resources in accordance with established policies;
- Access to assets is permitted only with proper approval; and
- Assets are adequately safeguarded, with any discrepancies immediately reported in accordance with System policies, including without limitation to management.

The financial matters of the System, its System Representatives and patients are very confidential and private. System Representatives shall not reveal these matters to any outside parties without permission from the Chief Financial Officer or the Chief Executive Officer.

### 2. Billing for Services Rendered

The System recognizes the imperative nature of accurate and timely billing. The System shall strive to help ensure that patients and third parties will be billed only for services actually provided and fully documented in the patient's medical record.

### 3. Business Courtesies

This part of the Code should not be considered an encouragement to make, solicit or receive any type of business courtesy, gift or invitation. It is the System's policy to not allow gifts or other incentives to improperly influence business relationships or arrangements.

#### (a) Receiving Business Courtesies, Gifts and Invitations

##### *Social & Professional Events*

Invitations from a current or potential business associate to attend a social or professional event may be accepted if attendance at the event serves a bona fide business purpose of the System or increases the community's awareness of the System and our purpose.

##### *Training, Education & Site Visits*

Attendance at vendor-sponsored training, educational events or site visits may be accepted in the following circumstances:

- If training and education occurs as part of the purchase agreement related to a purchased product or service, and unless such reimbursement is part of a purchase agreement, System Representatives may not accept payment for or reimbursement of travel and lodging expenses associated with this type of training. A System Representative's supervisor must pre-approve attendance at the training and reimbursement by a vendor for travel expenses, if any.
- If a System Representative is invited to a vendor-sponsored workshop, seminar or training sessions and the event is not limited to System Representatives; no fee is charged to any invitee or, if a fee is charged for some portion of the event, the same fee is charged or reduction is given to each invitee; the educational value to the System outweighs any recreational or entertainment value of the event. A System Representative's supervisor must pre-approve attendance at the training.

#### *Gifts*

Gifts of a moderate value, generally \$100 or less, may be accepted from an individual or organization that has a business relationship with the System. The appropriateness of a gift should be evaluated based on the likelihood that the gift will improperly influence or appear to improperly influence the System Representative's decisions and actions. Questions pertaining to the appropriateness of a gift should be directed to a System Representative's supervisor and/or the Hospital's Chief Compliance Officer.

#### **4. Conflicts of Interest**

To ensure the continued confidence of the communities served by the System, System Representatives shall act in a manner consistent with their responsibilities to the System and shall take care that no real or perceived conflicts between personal interests and those of the System result in detriment to the System. In general, a conflict of interest may exist when a System Representative, an immediate family member of a System Representative, or a person or organization associated with the System Representative has an existing or potential interest that concerns the System. Although it is impossible to list every circumstance giving rise to an actual or potential conflict of interest, a conflict of interest may occur when (as more fully described in the System's applicable Conflicts of Interest Policies and Procedures, as may be amended from time to time) a System Representative, a family member of the System Representative or a person or organization associated with a System Representative:

- Has a financial or ownership interest in an organization with which the System directly or indirectly does business or competes;
- Holds a position in an organization with which the System directly or indirectly does business or competes;
- Serves as a member of a governing board of an organization with which the System directly or indirectly does business or competes;
- Provides management or consulting services to an organization with which the System directly or indirectly does business or competes; or
- Uses or discloses information relating to the System for personal gain.

If a System Representative has reason to believe that he or she may have a conflict of interest, the System Representative shall promptly disclose the conflict of interest to the Chief Compliance Officer and in all other respects, comply with the System's applicable Conflicts of Interest Policies and Procedures. Actual or potential conflicts of interest involving System Representatives will be evaluated and resolved in accordance with the System's Conflicts of Interest Policies. If required by the System's Conflicts of Interest Policies and Procedures, System Representatives will submit an annual conflict of interest statement.

#### **5. Political Activities**

The System will not participate in or intervene in, directly or indirectly, any political campaign on behalf of (or in opposition to) any candidate for elective public office. However, System Representatives may give their own money to political candidates and participate in political campaign activities on their own time.

#### **6. Accuracy, Retention and Disposal of Records**

Every System Representative is responsible for the integrity and accuracy of the System's records. Records must not only comply with regulatory and legal requirements, but should also support our business practices and actions. Alteration or falsification of information on any record or document is strictly prohibited. It is important to retain and destroy records appropriately according to the System's Records Retention Policy, as may be amended from time to time. If a System Representative believes that documents should be saved beyond the applicable retention period, he or she should consult the Chief Compliance Officer.

#### **7. Electronic Media**

All communication systems, electronic mail, Intranet, Internet and voice mail systems employed or provided by the System are the property of the System and are to be primarily used for business purposes. Reasonable personal use of the System's communications systems is permitted; however, such communications are not private. The System reserves the right to periodically access, monitor and disclose, without notice, the contents of any e-mail or voice mail message. As a general rule, patient or other confidential information will not be disclosed through the Internet, unless System management authorizes such disclosure or as may otherwise be permitted by applicable System policies and procedures, as may be amended from time to time

### **D. General Legal Standards**

System services will be provided in accordance with applicable federal, state and local laws, rules and regulations. Such laws, rules and regulations relate to subjects such as licenses, permits, accreditation standards, access to treatment, consent to treatment, medical record-keeping, access to medical records and confidentiality, patient rights, Medical Staff membership and clinical privileges, and Medicare and Medicaid requirements. All System Representatives have a responsibility to be knowledgeable about and to comply with laws, rules and regulations affecting their job duties. System Representatives should immediately report violations or suspected violations of any law, rule or regulation in accordance with System policies, including without limitation to a supervisor, member of management or the Chief Compliance Officer.

## **1. Accrediting Bodies**

It is the System's intention and goal to interact with all accrediting bodies in a direct, open and honest manner. No action will intentionally be taken in our dealings with accrediting bodies that would mislead an accreditor or its survey team, either directly or indirectly.

## **2. Medicare/Medicaid Fraud and Abuse**

Facilities that receive monies for items or services provided under the Medicare and Medicaid programs are subject to several laws, rules and regulations designed to prevent fraud and abuse. These laws were created to make certain that federal funds, which finance the Medicare and Medicaid programs, are used only for those purposes. Failure to obey these laws, rules and regulations can result in fines, jail and/or exclusion of the offender from the Medicare and Medicaid programs.

## **3. Antitrust**

Antitrust laws are designed to create a level playing field in the marketplace and to promote fair competition. Discussing System business with a competitor could violate antitrust laws. Accordingly, System Representatives should not engage in discussions or agreements with competitors to establish, fix or control prices; to allocate or apportion service lines, markets, territories or patients; to boycott certain payors or suppliers; to disclose confidential bid information; or to engage in practices that are deceptive or otherwise unfair. System Representatives should not obtain proprietary or confidential information about a competitor through illegal or unethical means. System Representatives should not seek proprietary or confidential information when doing so would require anyone to violate a contractual agreement, such as a confidentiality agreement.

## **4. Copyright & Intellectual Property Laws**

Consistent with the high value the System places upon proprietary information, the System pledges to comply with applicable federal, state and local laws, rules and regulations that protect intellectual property. Intellectual property includes, without limitation, patents, trademarks, service marks, trade secrets, and copyrights. During the course of employment, a System Representative may have access to intellectual property owned by other businesses. This information may include, without limitation, patents, techniques, publications or trade secrets. This information is confidential and should not be disclosed to others or used for personal purposes.

## **Conclusion**

Underlying each of the above statements is the System's overall commitment to act with integrity in all its activities and to treat System Representatives, patients, physicians, students, and the many other constituents served by the System with utmost respect. Supporting policies and procedures, as may be amended from time to time, shall be set forth in the System Policy and Procedure Manual and/or Department Policy Manuals and are available to System Representatives upon request. Please review specific policies and/or procedures for additional guidance.

### III. COMPLIANCE WITH THE CODE

#### A. Questions Regarding the Code

The Chief Compliance Officer is responsible for implementation of the System’s Corporate Compliance Program, including this Code. The Chief Compliance Officer will work with members of management, as necessary, to implement this Code, which shall include training of System Representatives and enforcement of the Code. Any System Representative who has a question regarding the applicability or interpretation of this Code should direct the question to the Chief Compliance Officer in person, in writing or by telephone.

#### B. Reporting of Suspected Violations

System Representatives must report suspected violations of this Code. Reporting enables the System to investigate potential problems quickly and to take prompt action to deal with them. As a matter of policy, System Representatives will not be disciplined or subjected to retaliatory action as a result of making a report in good faith. Whenever possible, the confidentiality of the System Representative making the report will be protected.

Reports of possible violations of this Code, or of any law or ethical standard should be made in accordance with System policies, which may include without limitation reports to the System Representative’s supervisor. If the report is made to the supervisor, the supervisor will report the suspected violation in accordance with System policies, including without limitation to the Chief Compliance Officer. The System Representative may also report directly to the Chief Compliance Officer. A System Representative need not be absolutely certain that a violation has occurred before making such a report; rather, reasonable belief that a violation may have occurred is sufficient. System Representatives have a responsibility to come forward with any such information, without regard to the identity or position of the suspected offender.

#### C. Acknowledgment and Certification of Compliance

The System requires that all System Representatives sign an Acknowledgement confirming that they: (i) have received and read the Code; (ii) understand the Code and their own duty to comply with the Code; and (iii) have been given an opportunity to ask questions regarding the Code.

### ACKNOWLEDGMENT

I acknowledge and confirm that I have received a copy of the Code of Conduct (the “Code”). I further acknowledge that I have read the Code and have had an opportunity to ask questions regarding the Code and what is expected of me. I agree to conduct myself, as an employee, Medical Staff member, agent, consultant or other representative of the System in accordance with the Code. I also agree that I have a duty to report any suspected violations of the Code.

Name: (Please Print) \_\_\_\_\_

Department: \_\_\_\_\_

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Please return this page to the \_\_\_\_\_

*Thank you.*

# Sample Duties and Expectations of a Director

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

## **Purpose**

The hospital is committed to ensuring that it achieves standards of excellence in the quality of its governance and has adopted this policy describing the duties and expectations of directors.

## **Application**

This policy applies to all elected and *ex-officio* directors and is provided to directors before they are recruited for appointment to the board. Each director must confirm in writing that he or she will abide by this policy.

## **Position Description - Board of Directors**

As a member of the board, and in contributing to the collective achievement of the role of the board, the individual director is responsible for the following:

## **Fiduciary Duties**

Each director is responsible for fulfilling the Duty of Care, the Duty of Loyalty and the Duty of Obedience. The *Duty of Care* requires board members to act in good faith; to use the same degree of diligence, care and skill that a prudent person would use in similar situations or circumstances; and to act in a manner that they reasonably believe is in the best interest of the organization. The Duty of Care requires board members to make informed decisions; ask questions if issues are raised about the validity or completeness of the information presented to them; participate in deliberations and decisions; and to make informed decisions in good faith, without self-interest, and in the best interest of the corporation (thereby invoking the protection of the business judgment rule). The *Duty of Loyalty* requires board members to act solely in the best interest of the organization and to refrain from deriving personal gain to the organization's detriment. This duty includes a board's obligation to avoid impermissible conflicts of interest, prevents board members from usurping a corporate opportunity for their own personal gain and requires board members to preserve the confidentiality of the corporation's affairs. The *Duty of Obedience* requires the board and its members to comply with applicable federal, state, and local laws, rules and regulations; honor the terms and conditions of the organization's mission, bylaws, policies and procedures, and act at all times within the scope of their authority under the corporation's articles, bylaws and applicable laws.

Each director shall apply the level of skill and judgment that may reasonably be expected of a person with his or her knowledge and experience. Directors with special skill and knowledge are expected to apply that skill and knowledge to matters that come before the board.

## Accountability

Each director's fiduciary duties are owed to the corporation. The director is not solely accountable to any special group or interest and shall act and make decisions that are in the best interest of the hospital, as a whole. A director shall be knowledgeable of the stakeholders to whom the hospital is accountable and shall appropriately take into account the interests of such stakeholders when making decisions as a director, but shall not prefer the interests of any one group if to do so would not be in the best interests of the hospital.

## Education

Each director shall be knowledgeable about:

- The operations of the hospital;
- The health care needs of the community served;
- The health care environment generally;
- The duties and expectations of a director;
- The board's governance role and responsibilities;
- The board's governance structure and processes;
- The board-adopted governance policies; and,
- The hospital policies applicable to board members.

Each director will participate in a board orientation session, orientation to committees, board retreats and board education sessions. A director should attend additional appropriate educational conferences in accordance with board-approved policies.

## Board Policies and Hospital Policies

Each director shall be knowledgeable of and comply with all board and hospital policies including but not limited to:

- The Board's Conflicts of Interest Policy;
- The Board's Minutes Policy;
- The Board's Confidentiality Policy;
- The Hospital's Code of Conduct;
- The Hospital's Whistleblower Policy;
- The Hospital's Document Destruction and Retention Policy;
- The Hospital's Executive Compensation Policy;
- The Hospital's Joint Venture and Investments Policy; and
- The Hospital's Compliance Policy.

## Teamwork

Each director shall develop and maintain sound relations and work cooperatively and respectfully with the board chair, members of the board and senior management.

## Community Representation and Support

Each director shall represent the board and the hospital in the community when asked to do so by the board chair. Board members shall support the hospital and the foundation through attendance at hospital and foundation sponsored events.

## Time and Commitment

Each director is expected to commit the time required to perform board and committee duties. It is expected that a director will devote a minimum of \_\_\_\_hours per month.

The board meets \_\_\_\_ times a year and a director is expected to adhere to the board's attendance policy. Board and board committee members are expected to attend all board meetings and all meetings of the committees to which they are assigned. Directors and committee members may be unable to attend some meetings due to conflicts or other unforeseen circumstances. An attendance rate of at least 75 percent is acceptable.

Where a director or committee member fails to attend 75 percent of the meetings of the board or of a committee in a 12-month period, or is absent for three consecutive meetings, the chair will discuss the reasons for the absences with the member and may ask the individual to resign.

Each director is expected to serve on at least one standing committee. Committees generally meet monthly.

## Contribution to Governance

Directors are expected to make a contribution to the governance role of the board through:

- Reading materials in advance of meetings and coming prepared to contribute to discussions;
- Discussing any additional items to be added to the proposed board meeting agenda with the board chair. If the chair and board member do not agree, notify the board chair and address the issue as “other business” during the meeting.
- Offering constructive contributions to board and committee discussions;
- Contributing his or her special expertise and skill;
- Respecting the views of other members of the board;
- Voicing conflicting opinions during board and committee meetings but respecting the decision of the majority even when the director does not agree with it;
- Respecting the role of the chair;
- Respecting the role and responsibilities of board committees; and,
- Participating in board evaluations and annual performance reviews.

## Continuous Improvement

Each director shall commit to be responsible for continuous self-improvement, including participation in board education sessions and retreats. A director shall receive and act upon the results of board evaluations in a positive and constructive manner.

### **Term and Renewal**

Directors are elected for a term of three years and may serve for a maximum of nine years. A director's renewal is not automatic and shall depend on the director's performance.

### **Amendment**

This policy may be amended by the board.

### **Approval Date:**

### **Last Review Date:**

# Form 990 Policies and Procedures

Set forth below is a listing of the policies and procedures addressed in the new Form 990. In some cases, a tax-exempt organization must state whether it has adopted the policy or procedure. In other instances, information about the policy or procedure is requested more indirectly or in narrative form.

1. Mission Statement (adopted by the governing body)
2. Conflicts of Interest Policy and Annual Disclosure Process
3. Whistleblower Policy
4. Document Retention and Destruction Policy
5. Audit Committee
6. Contemporaneous documentation of meetings (i.e., minutes)
7. Copy of Form 990 to each board member before filing
8. Process for reviewing Form 990
9. Policy Governing Activities of Chapters, Affiliates and Branches
10. Rebuttable Presumption of Reasonableness
11. Compensation Committee
12. Conservation Easement Policy
13. Policy Requiring Safeguarding Exempt Status with Respect to Transactions and Arrangements with Related Organizations
14. Policy Regarding Tax-Exempt Bond Compliance
15. Travel and Expense Reimbursement Policy
16. Gift Acceptance Policy
17. Community Benefit Report (Hospitals only)
18. Charity Care Policy (Hospitals only)
19. Billing and Collections Policy (Hospitals only)

## **Additional Policies Listed by the IRS in its Life Cycle Document:**

1. Executive Compensation Policy
2. Investment Policy
3. Fundraising Policy
4. Code of Ethics

# What is the Board's Governance Role?

## The Board's Governance Role

Governance means two things: it is what a board does—the areas in which the board exercises a governance role and the approach the board takes to the exercise of its role. Governance is also used to describe how the board does its work—the processes used by the board to perform its governance role.

The role of the board is to govern and oversee the affairs of the hospital. The board has the ultimate oversight and decision-making role, subject only to those matters reserved to others, such as a system board or parent organization; or to sponsors in the case of some religious-owned facilities.

“What” a board does requires an understanding of the areas over which the board exercises a governance role. Typically, the board oversees matters including mission and vision development and strategic planning, quality and patient safety, financial and management performance, risk assessment and management, stakeholder input and feedback and board development.

### *Strategic Planning Including Mission, Vision and Values*

The board participates in the formulation of, and adopts the statement of, the hospital's mission, vision and values. The board is responsible for the establishment of the hospital's strategic plan. While the board delegates the development of the strategic plan to management, it is responsible for ensuring that strategic planning is done and participates appropriately in the hospital's strategic planning processes. The board ultimately approves the hospital's strategic plan and oversees implementation of the plan. Oversight is exercised through

monitoring hospital operations and ensuring that board decisions are consistent with the strategic plan and further the hospital's mission, vision and values.

As part of a regular annual planning cycle, the board conducts a review of the strategic plan and reviews yearly work plans for consistency with the strategic plan.

*For a further description of the role of the board in strategic planning, see Chapter 4.*

### *Oversight of Quality, Performance and Measurement*

The board is responsible for the quality of patient care and safety. In addition, the board oversees and is responsible for organizational effectiveness in areas such as management performance, financial performance, external relations and the board's own effectiveness. The board performs its role with respect to ensuring quality through identifying appropriate performance standards and indicators, reviewing hospital and board performance against such standards and indicators, and ensuring that management has put plans in place to address variances from performance standards and indicators.

*For a further description of the role of the board with respect to performance management and measurement, see Chapter 5.*

### *Financial Oversight*

The board acts as steward of the financial affairs of the hospital. The board is responsible for the adequacy and allocation of financial resources. The board approves financial policies and ensures that the annual capital and operating budget is developed in

a manner that is consistent with those policies. The board monitors financial performance against the approved budget and operating plans. The board ensures that assets are allocated in a manner that is consistent with the mission, vision, values and strategic direction. Boards of organizations that are charitable, nonprofit entities are responsible for the appropriate use of charitable assets. The board is responsible for overseeing the integrity of internal controls and approving audited financial statements. The board also ensures that the hospital appropriately accounts to its stakeholders for financial matters.

*The board's role in financial oversight is further discussed in Chapters 5 and 7.*

### **CEO Selection, Performance Evaluation and Succession Planning**

The board exercises oversight of management through the selection and evaluation of the CEO's performance. The board determines the position description for the CEO and ensures that a proper recruitment and selection process is implemented. The board approves the annual performance goals for the CEO and evaluates performance against pre-approved goals. The board also determines CEO compensation and ensures that succession plans are in place for the position of CEO.

*For a further discussion of the board's role in CEO oversight see Chapter 6.*

### **Risk Identification and Oversight**

The board oversees management's risk management program and it is responsible for ensuring that risks inherent in the hospital's operations are appropriately analyzed. The board is responsible to identify unusual risks and ensure that plans are implemented to address them.

For a further discussion of the board's role in enterprise risk management, see Chapter 7.

### **Communication and Accountability**

The board identifies its stakeholders and ensures that

appropriate reporting and communication mechanisms are put in place to facilitate stakeholder accountability and communication.

### **Governance**

The board is responsible for its own governance.

The board must ensure that there are structures and processes to facilitate effective governance.

Governance includes: board recruitment; orientation; evaluation and succession planning; board policies and processes including position descriptions for officers, board and committee chairs and board members; and committee goals, objectives, work plans and evaluation processes.

### **Governance versus Management**

With respect to each of the areas identified above, the board has a governance role, not a management role. The board is not responsible for day-to-day management. The board governs and management manages. While the board's role is to see that the hospital is well-managed, day-to-day management is delegated by the board to the CEO and the board oversees the performance of management of the affairs of the hospital.

The distinction between governance and management can be challenging for any board, particularly a hospital board. There are several characteristics of a hospital that often cause board members to become more heavily engaged in management issues than is appropriate or consistent with the board's governance role. Hospitals provide a vital community service and are supported by local donors. A director and his or her family members are usually also consumers of the hospital's services. These factors can lead board members to "cross the line" from time to time and delve more deeply into matters that should be solely within the purview of management. When this happens the board loses both its focus and the time that it needs to spend on board business.

It falls largely to the board chair to ensure the board maintains its focus on its governance role. The board chair does this by carefully setting board agendas

and managing discussion and debate during board meetings.

## The Board and Delegation

Generally, boards cannot delegate their duty to govern the organization. There are, however, some exceptions:

- If specifically authorized by the by-laws or state law, the board's Executive Committee may make any decision that could have been made by the board, and such decisions will be binding on the whole board. Voting members of an Executive Committee must be directors.
- The board delegates to the CEO the authority for the day-to-day management of the affairs of the hospital.
- Board committees, other than the Executive Committee, may be delegated responsibility to review and recommend action to the full board. Such committees may also be delegated responsibility to oversee a particular activity of the board such as compensation or compliance and report and make appropriate recommendations to the full board. The board may reasonably rely on committee recommendations but the authority to act remains with the full board.

## Importance of Adopting a Statement of the Board's Role and Responsibilities

A board of directors should adopt a formal statement of the role and responsibilities of the board. While the board cannot limit its broad governance role by such a statement, it is a useful tool for the board in its governance processes.

- A statement of the board's role and responsibilities provides a useful educational tool to new directors to help them understand the areas in which the board governs.
- The board's annual work plan should be developed with reference to the board's roles and responsibilities and the organization's strategic plan and strategic direction.

- Board committees should be established in furtherance of the board's role and responsibilities. A formal statement assists the board in determining which committee should be established and the duties and responsibilities of those committees.
- In order to make board evaluations effective, the board must first have an understanding of the areas in which it is exercising a governance role. Board assessments and questionnaires should be designed to assist in auditing the board's execution of its roles and responsibilities.

## Governance Processes

Governance incorporates the policies and procedures used by the board to govern the organization. Representative elements of governance policies and procedures that facilitate good governance are more fully discussed later in this guide. These policies and procedures include:

- **Board Composition and Recruitment Processes** — This includes the size of the board, the composition of directors—which directors are elected and how many are *ex-officio* directors (the identity and source of the *ex-officio* directors); the skills, experience and diversity of the board; the procedures that the board uses to recruit and orient its members; the term of board member service; how board turnover and succession planning is managed; and whether the board has staggered terms and term limits.
- **Officers** — Officers are the directors who take on board leadership roles. Board procedures should be in place for defining the role and qualifications of officers, setting their terms and recruiting and selecting them.
- **Committees** — Board committees are an important element in board governance. They assist the board in performing work that the full board might not otherwise have the time to do. The board's governance procedures should distinguish between standing and *ad hoc* committees; ensure committees are not inserting themselves or interfering with the work of

management; indicate how committee leadership, composition, duties and work plans are determined; and provide for periodic evaluation of committee performance.

- **Meeting Processes** — This includes how agendas are set; how directors have input into agendas; conduct of executive sessions; approval of minutes; ensuring an appropriate level and timely dissemination of meeting materials; and meeting evaluation.

## How a Board's Governance Processes Are Documented

Generally speaking, a board has fairly wide latitude to adopt governance policies and procedures that will best suit its needs.

The board's approach to governance is documented through a variety of instruments, such as the bylaws and board policies and procedures, but some processes may simply be reflected in the board's common practices.

### By-laws

State corporation laws generally prescribe what must be in by-laws but give significant latitude to the organization to both supplement the statutory provisions for governance and/or adopt changes from the basic statutory procedures. In the absence of a specific provision in the by-laws, the statutory requirements will apply. Well-drafted by-laws provide good structure for the business of the board with enough specificity to comply with state law while avoiding excessive detail that would require repeated amendment.

By-laws serve a number of purposes:

- They set out the hospital's corporate governance.
- They prescribe board composition, duties, powers, delegations of authority and reserved powers as permitted by state corporate law.
- They set forth procedures that apply to board conduct including the election of directors and

officers, terms, quorums, voting, super-majority votes, frequency of meetings, committees and other matters that affect the orderly transaction of the business of the board.

### Board Adopted Governance Policies

A board's governance process may also be set out in policies that are adopted by the board from time to time. Provided the board's governance policies do not deal with matters that are required to be included in the by-laws or approved by a higher authority, the governance policies can be very broad in scope and will require the approval of the board only. Governance policies should be:

- Approved by the board;
- Periodically reviewed as part of ongoing governance reviews; and,
- Made available to new board members.

## Conducting a Governance Audit

### Purpose

The purpose of governance is to make sure that the board is able to fully discharge its fiduciary duties in a manner that ensures accountability to stakeholders and that the organization's mission is achieved.

A governance audit evaluates whether the board's policies, procedures and practices effectively support board performance. The governance audit should also review board policies, procedures and practices against generally accepted good governance practices as part of the board's commitment to continuous improvement.

### Scope of Audit

A governance audit can be broad or limited in scope. When a board evaluates its meeting effectiveness at the end of a board meeting it is conducting a limited audit. Annual board evaluations are another form of governance audit. A full audit would involve looking at every aspect of governance including board nomination; composition and recruitment practices; committee composition; board orientation and education; board meeting agendas

and processes; and officer qualifications, selection and evaluation.

### **Process**

The process for conducting a governance audit may include the following:

- Determine the scope of the audit process that will be undertaken.
- Conduct an inventory of governance processes and practices. This is an information-gathering phase and would include an examination of governance documents and policies and may include a survey or questionnaire of board members.
- Evaluate current governance practices against both legal requirements and good governance practices.
- Consider whether the documentation for governance processes reflects actual practices.
- Assess areas where change may be appropriate.
- Consider whether there are any gaps in the board's governance processes.

### **Work Plan**

Audit results should be used to develop a work plan to address areas for improvement or address identified gaps. Consider implementing an evaluation of new governance processes at a future time to measure their effectiveness

A governance audit enables assessment of the degree to which governance processes and practices are effective in supporting board performance and are within the range of what are considered good governance practices.

### **Sample Tools**

The following tools will help you apply the concepts in this chapter to your board's work. These tools are also available online at [www.americangovernance.com](http://www.americangovernance.com).

# Sample Statement of the Roles and Responsibilities of the Board

*Note: The following statement is intended to be an example that boards should adapt to meet their individual needs.*

## **Purpose**

To ensure that members of the board have a common understanding of the role of governance, the board has adopted this Statement of the Roles and Responsibilities of the Board.

## **Responsibility of the Board**

The board is responsible for setting the strategic direction for the organization, appointing the Chief Executive Officer, overseeing financial and operational performance and safeguarding the assets of the organization. While the board delegates to management the responsibility to implement day-to-day activities consistent with the strategic direction of the organization, the board retains the responsibility to oversee management and make key strategic decisions. Each director is responsible to act in good faith, in the best interests of the hospital and the community it serves and to use the same degree of diligence, care and skill that a prudent person would use in similar situations or circumstances.

## **Strategic Planning and Mission, Vision and Values**

- The board formulates and adopts the hospital's statement of mission, vision and values and ensures they reflect the needs of the community and other stakeholders.
- The board develops and approves a strategic plan that will enable the hospital to realize its mission and vision.
- The board oversees hospital operations for consistency with the strategic plan and strategic directions.
- The board receives regular briefings or progress reports on implementation of strategic directions and initiatives.
- The board ensures that its decisions are consistent with the strategic plan and the hospital's mission, vision and values.
- The board annually conducts a review of the strategic plan as part of a regular planning cycle.

## **Quality and Performance Measurement and Monitoring**

- The board is responsible for establishing a process and a schedule for monitoring and assessing performance in areas of board responsibility including implementation of strategic initiatives and actions in a manner consistent with the mission, vision and values.
- The board ensures that management has identified appropriate measures of performance in mission critical areas such as:
  - Oversight of management performance.

- Quality of patient care and hospital services.
- Finance.
- External relations.
- Board effectiveness.
- The board monitors management and board performance against board-approved performance standards and indicators.
- The board ensures that management has plans in place to address variances from performance standards and indicators, and the board oversees implementation of plans of correction and remediation.

### **Financial Oversight**

- The board is responsible for stewardship of financial resources including ensuring availability of, and overseeing allocation of, financial resources.
- The board approves policies for financial planning and approves the annual operating and capital budget.
- The board monitors financial performance against budget.
- The board approves investment policies and monitors compliance.
- The board ensures the accuracy of financial information through oversight of management and approval of annual audited financial statements.
- The board ensures management has put measures in place to ensure the integrity of internal controls.

### **Oversight of Management Including Selection, Supervision, Performance Evaluation and Succession Planning for the CEO**

- The board recruits and supervises the CEO by:
  - Developing and approving the CEO job description.
  - Undertaking a CEO recruitment process and selecting the CEO.
  - Reviewing and approving the CEO’s annual performance goals.
  - Reviewing CEO performance and determining CEO compensation.
- The board ensures succession planning is in place for the CEO and senior management.
- The board exercises oversight of the CEO’s supervision of senior management as part of the CEO’s annual review.

### **Quality Improvement, Risk Identification and Oversight**

- The board is responsible to be sufficiently informed about risks inherent in hospital operations and ensures that risk analysis is integrated into board decision-making when appropriate.
- The board is responsible to be sufficiently informed of the hospital’s quality improvement programs to ensure that quality improvement is integrated into board decision-making.
- The board ensures that appropriate risk management and quality improvement programs and processes are in place to safeguard patient safety and to advance the delivery of high quality and efficient care.

- While the board oversees management’s performance of risk management and quality improvement, the board is responsible for monitoring the remediation of significant risks and the implementation of significant quality improvement initiatives.
- The board oversees the effectiveness of the hospital’s risk management and quality improvement programs through regular reports and monitors remediation of issues discovered by such programs.

### **Communication and Accountability**

- The board ensures the organization maintains strong relationships and effectively communicates with the community it serves, its medical staff, its employees and other stakeholders in a manner consistent with the public trust with which they serve.
- The board advocates on behalf of the hospital and the communities it serves in support of the mission, vision, values and strategic directions of the hospital.

### **Governance**

- The board is responsible for the quality of its own governance.
- The board establishes governance structures to facilitate the performance of the board’s role and enhance individual director performance.
- The board is responsible for the recruitment of a skilled, experienced and qualified board.
- The board ensures board member orientation and ongoing board training and education.
- The board periodically assesses and reviews its own performance and the performance of individual board members and ensures plans are implemented to continuously improve board and board member performance.

### **Legal and Regulatory Compliance**

- The board ensures that appropriate processes are in place to ensure compliance with legal and regulatory requirements.
- The board is responsible to be sufficiently informed about legal, regulatory and accreditation standards applicable to hospital operations to ensure that compliance is integrated into board decision-making.
- The board ensures that appropriate corporate compliance programs and processes are in place to protect against legal and regulatory noncompliance.
- While the board oversees management’s performance of the corporate compliance program, the board is responsible for ensuring that there are plans in place to prevent and manage significant compliance risks.
- The board oversees the effectiveness of the hospital’s corporate compliance program through regular reports and monitors the hospital’s efforts to address and remediate issues of noncompliance.

### **Amendment**

This statement may be amended by the board.

Approval Date:

Last Review Date:

# Sample Hospital Governance Audit Questionnaire

*Note: The following questionnaire is intended to be an example that boards should adapt to meet their individual needs.*

Checklist of Governance Practices	Status of Governance Practices & Recommendations
<b>1. Legal Structure of the Hospital and Background Information</b>	
a. Review of Articles of Incorporation and Bylaws	
b. Date of most recent by-law review: Provide bylaws (administrative).	
c. Identify any special issues or challenges facing the hospital (i.e.,resources, stability).	
d. Date of most recent governance review.	
<b>2. Role of the Corporation and Accountabilities</b>	
a. Role of the corporation (provide copies of: corporate purpose, mission, vision and values, strategic directions).	
b. Date of last strategic plan. Date of next review.	
c. Identify a corporation's accountabilities and key relationships. Is there a formal statement of corporate accountability? Date of last review.	
<b>3. The Board's Governance Role</b>	
I. Define the role of the board	
a. Board exercises a governance role in the following areas: strategic planning, financial oversight, risk/quality/compliance, CEO supervision, performance and succession planning, and governance. Has the board expressly adopted a statement of the board's role? (Provide copies.) Date of last review	
b. Is there an annual board workplan? (Provide copies.)	
II. Provide an outline of how the board performs its responsibilities for the following areas of board performance:	
a. Strategic planning – ensure a strategic plan is developed with board participation and ultimate board approval, ensure and participate in annual review of strategic plan.	
b. Oversight of the CEO – develop and approve CEO job description; select the CEO, review and approve CEO's annual performance goals; review CEO performance and compensation; ensure succession and development plans are in place for CEO and senior management; and exercise oversight of CEO's supervision of senior management as part of CEO's annual review.	

Checklist of Governance Practices	Status of Governance Practices & Recommendations
<p>c. Quality and risk identification and management – ensure quality standards and indicators are established and approved by the board; ensure board understands and appropriately exercises its role in relation to risk and quality; ensure processes are in place for identifying risks; and that plans are developed and implemented to monitor and manage risks.</p>	
<p>d. Legal, regulatory and accreditation compliance– ensure board understands how organization implements programs for compliance with legal, regulatory and accreditation standards and that board understands and appropriately exercises its role in relation to compliance; ensure that corporate compliance programs and processes are in place to identify legal, regulatory and accreditation noncompliance; and, ensure that plans are developed and implemented to monitor plans of correction if required.</p>	
<p>e. Financial oversight – stewardship of financial resources including setting policies for financial planning; approving annual budget; monitoring performance; approving investment policies; and approving audited financial statements. Ensure charitable assets are used in a legally appropriate and accountable manner.</p>	
<p>f. Governance – the board is responsible for the quality of its own governance; the board establishes and periodically assesses policies regarding board conduct and processes; the board reviews its governance structures (board size and composition, committee mandates and composition, officers, meeting effectiveness, etc.) at periodic intervals; the board is responsible for its own leadership development, succession and ongoing education and monitors board and individual director effectiveness through annual evaluations.</p>	
<p>g. Communication and accountability – ensure organization appropriately communicates with its stakeholders in a manner consistent with its accountability to stakeholders.</p>	
<p><b>4. Duties, Obligations and Expectations of Individual Directors</b></p>	
<p>a. Ensure that board members understand that they must discharge their fiduciary obligations to the corporation. Board members must understand that they must act in the corporation’s best interest, ensuring that resources are used in a reasonable, appropriate and legally accountable manner. As fiduciaries, board members must comply with the Duty of Care, the Duty of Loyalty and the Duty of Obedience. Is there a formal policy with respect to directors’ duties? How are directors made aware of their duties and obligations?</p>	

Checklist of Governance Practices	Status of Governance Practices & Recommendations
<p>b. Fiduciary Duties of Board Members</p> <ul style="list-style-type: none"> <li>• Duty of Care-act in good faith, using the degree of diligence, care and skill that a prudent person would in similar circumstances</li> <li>• Make informed decisions by becoming familiar with the relevant, available facts</li> <li>• Make due inquiry by asking questions if there are concerns about the validity or completeness of the information provided</li> <li>• Duty of Loyalty</li> <li>• Avoid conflicts of interest</li> <li>• Uphold confidentiality</li> <li>• Avoid usurping a corporate opportunity for personal gain</li> <li>• Duty of Obedience</li> <li>• Honor the terms and conditions of the organization’s mission, bylaws, policies and procedures</li> <li>• Act at all times within the scope of the board’s authority under the corporation’s articles, bylaws and applicable laws</li> <li>• Comply with the requirements of applicable laws, rules and regulations</li> </ul> <p>Are new members of the board given materials and education orienting them to their fiduciary duties? Is there any continuing education for board members regarding their fiduciary duties especially in the event of important legal developments relevant to their understanding and discharge of their fiduciary duties?</p>	
<p>c. Describe expectations regarding the level of attendance and participation at board and committee meetings. How are these expectations communicated?</p>	
<p>d. Describe participation in board and individual director evaluation (self-evaluation and/or peer review).</p>	
<p><b>5. Board Governance Policies</b></p>	
<p>a. Has a formal board Governance Policy Manual been prepared? (Provide copies.)</p>	
<p>b. Date of last review.</p>	
<p>c. Process for updating.</p>	
<p><b>6. Board Composition &amp; Recruitment</b></p>	
<p>I. Board Size and Composition</p>	
<p>a. Identify number of elected/appointed/ex-officio directors. List ex-officio directors by office.</p>	

Checklist of Governance Practices	Status of Governance Practices & Recommendations
II. Board Quality	
a. Is there a process to identify skills required of board members?	
b. Is a board profile or skills matrix of the current board maintained?	
c. How are prospective board nominees identified? Is a roster of eligible candidates maintained?	
d. How are prospective candidates advised with respect to role and expectations of directors?	
e. How are prospective candidates evaluated?	
f. Who makes candidate recommendations?	
g. How are candidates approved and added to the board?	
III. Term of Office	
a. Board term (initial, renewal and maximum terms).	
b. Committee chair terms (initial, renewal and maximum terms).	
c. Officer terms (initial, renewal and maximum terms). Identify officers.	
<b>7. Officers</b>	
a. Is there a clear process to select officers and committee chairs? (Describe process.)	
b. Are position descriptions prepared and periodically reviewed?	
<b>8. Board Committees</b>	
a. Do committees have written charters and workplans?	
b. Are committee charters and workplans reviewed periodically?	
c. How are committees established? Describe how the board receives and responds to committee reports and work product.	
d. Is the Audit Committee comprised of independent directors? Are the Executive Compensation and Governance/Nominating Committees also comprised of independent directors?	
e. Is there an Executive Committee and how does it report to the board? Describe decision-making role of Executive Committee.	

Checklist of Governance Practices	Status of Governance Practices & Recommendations
<b>9. Board Orientation, Education and Evaluation</b>	
a. Is board orientation mandatory? How is orientation conducted? (Provide index of orientation manual.)	
b. Is there a written policy and procedure manual for new board members? (Provide index.)	
c. Is there a clear process for directors to participate in external education programs? (Describe process.)	
d. How is board education conducted?	
e. What is the frequency of continuing education for directors?	
f. Is an annual board retreat held? (Date of last retreat, attendance and sample agenda.)	
g. Is there an annual evaluation of the performance of individual directors and the board as a whole? (Provide a copy of the evaluation tool and describe process for providing feedback and acting on results.)	
<b>10. Board Governance Policies</b>	
a. Provide sample board agendas. Is board work aligned with the annual board goals and workplan?	
b. Are decision items separated from information items?	
c. Is specific time allocated for agenda items and is time adhered to?	
d. What is the process to bring forward board committees' recommendations and reports?	
e. Are meetings regularly evaluated? (Provide copy of evaluation tool.)	
f. Are meetings open and is there a proper use of executive sessions? (Relevant where open board meetings are required by law or are in furtherance of transparency). Is there a formal policy for executive sessions? Is there a policy for the attendance of the public at board meetings?	
g. Does the board meet in executive session without management from time to time?	
h. Is there a clear policy that allows the board to obtain independent advice (legal or financial or other)?	

# The Board's Role in Credentialing Physicians

Physicians may be employed by the hospital or they may be independent contractors. Whether they are employed or independent practitioners, all physicians and other clinicians who deliver medical services to patients must be appointed to the medical staff before they are granted privileges to practice in the hospital. These activities are referred to as the “credentialing process.”

Credentialing of physicians and other clinicians is a process for which the board will have final authority. Depending on state law, this authority may be with the medical staff organization. Although state law will vary, both the medical staff organization and the board participate in the process of appointing physicians to the medical staff of the hospital, determining their privileges, and revoking, suspending and refusing the reappointment of physicians.

The duties and responsibilities of the board are detailed in the by-laws of the hospital and state corporate and licensing laws.

## *The Credentialing Process*

The hospital, through its board, in collaboration with its medical staff, must exercise due care in the appointment and credentialing process. There must be an effective method of peer review, both initially and on an on-going basis. The failure to properly evaluate applicants exposes patients to harm and may result in hospital liability.

Applications for medical staff membership and privileges are subject to state law, Conditions of Participation in the Medicare Program, accreditation standards, medical staff by-laws and the corporate by-laws of the hospital, each of which articulates the due process to which the applicant is entitled.

## **Medical Staff By-Laws**

In addition to the corporate by-laws of each hospital, each hospital must have an organized medical staff.

The medical staff will have its own by-laws, which will coordinate with the corporate by-laws. Depending on state law, approval of medical staff by-laws and amendments thereto is reserved to the hospital board (some state laws mandate a complex relationship between the board and the medical staff which should be carefully reviewed by legal counsel for compliance). While the details of medical staff by-laws are beyond the scope of this document, in general terms, the medical staff by-laws will cover such things as:

- The qualifications for appointment to the professional staff (the medical, dental, advance practice nursing, midwifery and other allied professionals) of the hospital—for example, license to practice and specialty certifications.
- The categories (e.g., active, associate, courtesy staff, etc.) and departments (e.g., surgery, emergency, pediatrics, etc.) of the hospital staff and the privileges and duties that attach to each category or department—for example, active staff members typically have the privilege of admitting patients to the hospital, whereas other categories may not have admitting privileges. Also, professional staff in certain categories or departments may have on-call responsibilities whereas others do not.
- The process for initial applications, annual or bi-annual reappointments, privileges and changes in privileges, and the process for summary suspension or termination.

Coordination between the hospital board and the medical staff will be required in the appointment of health care professionals to the medical staff and the awarding of privileges to members of the medical staff.

Generally, a committee of the medical staff reviews the credentials of the applicant and makes a written recommendation to the board. The medical staff must give the applicant written notice of its recommendation, particularly if there is an adverse recommendation. The applicant is entitled to written reasons for the adverse recommendation and to request a hearing before a committee of the medical staff, if the by-laws so provide, or directly before the board. The board makes final decisions regarding medical staff membership and/or privileges.

Each appointment to the medical staff is for a fixed number of years, usually one or two. Physicians must therefore apply for renewal of privileges, following the same process.

The board may also summarily revoke or suspend a physician's privileges where it considers it necessary to protect the safety of patients. Any physician under summary suspension or termination is entitled to due process with ultimate review by the board.

## Frequently Asked Questions

### 1. *How much information does the board usually receive about the physicians that it appoints?*

Typically, the board will receive a written recommendation from the medical staff. The recommendation will not contain significant detail about individual physicians and the board should not need to review all of the information upon which the medical staff makes its recommendation, provided the board is satisfied that the medical staff followed a fair and thorough process as set forth in the medical staff by-laws. Board questions to the medical staff should generally focus on process, rather than a substantive review of the application or the underlying facts of an adverse action.

### 2. *Are dentists, midwives and other health professionals entitled to the same procedural protection as physicians under the by-laws?*

The provisions of many by-laws may not apply equally to physicians and other health professionals. How and to what extent physicians are treated differently will be dictated by differences in state law. In any particular case, where there is a question about what particular procedural protection should be afforded to an individual applicant or group of applicants, the board should consult its own legal counsel.

### 3. *Should the appointment of physicians and other professional staff members be dealt with in an in-camera session of the board?*

Yes, as these decisions deal with personal matters relating to professional staff members, it is more appropriate to hold the meeting *in-camera*.

### 4. *Can the board appoint physicians for more than one year?*

Yes, if allowed by state law.

### 5. *Do all reappointments need to come up at the same time?*

In most hospitals, for administrative convenience, all reappointments or reappointments for particular departments are considered together, but they do not have to be. Each hospital can decide on the process that works best for it.

### 6. *Can anyone other than the board appoint a physician?*

Most hospital by-laws allow some officer of the hospital (e.g., the CEO) to temporarily appoint a physician to fill an immediate need, but this usually requires board confirmation at its next meeting.

### 7. *What if the board is considering not implementing the recommendation of the medical staff?*

If the board receives a recommendation from the medical staff that for some reason it is considering not implementing, it is recommended that the board receive specific legal advice before making its decision. The issue should be deferred to the next board meeting and legal counsel consulted by the board chair in the interim.

# The Board's Role in Strategic Planning

## The Board's Strategic Oversight Role

Hospitals, and the people who work there, need a clear sense of the organization's purpose and what it wants to become. One of the board's key roles is providing that direction.

Strategy, or strategic direction, is about the big picture. While it can be interpreted in various ways, it generally involves the following:

- The definition of success for the entity, including the basic framework of goals and policies that guide the behavior of the organization over the long-term.
- The approach or game plan for becoming successful, including the assignment of resources and the development of organizational competencies.
- The positioning of the hospital in relation to others in the industry or sector in terms of whom it serves, and the programs and services offered.

Since the 1970s in the corporate world, and the mid-1980s in health care, providing strategic direction has been primarily accomplished by undertaking a planning process to produce a strategic plan.

The board is not responsible for conducting strategic planning, but rather it ensures that strategic planning is done. As a result, the board benefits from strategic planning by playing its role in providing strategic oversight of the business and affairs of the organization.

## Components of Strategic Oversight

The board's role in strategic oversight can be broken down into three components.

### 1. *Defining the Enduring Fundamentals — Mission, Vision and Values*

The first ingredient in strategic oversight is the most fundamental and long-lasting. This involves setting the strategic framework for the organization over the long-term. Generally, the elements are referred to as the mission, vision and values. However, there are variations in the use of these and related terms.

**Mission** — typically, the mission is a statement of the hospital's purpose and why the hospital exists. As such, it is often called a statement of the business of the hospital—what we do, for whom, and why.

- Normally, the statement is broad and enduring so that it remains relevant over time.
- Changes to the statement often clarify, rather than alter, fundamental content.
- When possible, a concise, unambiguous mission statement serves the organization best, although this practice is not universal.

**Vision** — while the terms “mission” and “vision” are often used interchangeably, there is a clear distinction. A mission states the enduring purpose of the hospital. A vision is a description of what the hospital plans to accomplish or what it expects to become over a period of time.

- Long-term vision statements tend to be short and inspiring, but not very helpful in terms of describing what the hospital will look like.
- Medium-term vision statements—as part of

establishing the strategic direction (see next section) for a planning period of three to five years or more, the hospital may develop a more descriptive vision statement or goal for the hospital. Essentially, the medium-term vision statement says that, for example, in five years, the hospital will accomplish this or look like this, in terms of these key features.

**Values** — the values statement is actually a collection of statements including values, norms, principles, and commitments the organization believes in and plans to live by. These values tend to remain in force for a long time with changes being more about form than substance.

## 2. *Setting Medium-Term Strategic Directions*

Consistent with the enduring mission, vision and values, a strategic plan should provide some direction for the next few years. Strategic direction involves defining a medium-term (often three to five years) vision and a set of directions or initiatives that guide the investment of resources and efforts. These directions or initiatives may include:

- Goal or time-bound vision—the revised and more concrete description of the vision for the time horizon of the plan (e.g., the vision for 2012). This vision can, and should, include a concrete description of the hospital or health system or population in the future. It can be more tangible and measurable than the long-term vision referred to above.
- Strategic directions (objectives, themes) that build toward the restated vision. These would include changes to strategic positioning, which typically include who is served and what programs and services will be emphasized or offered.
- Defining organizational capacity and characteristics needed to succeed.
- Outlining strategic initiatives for moving toward the new vision and positioning, and for improving the organization’s capacity and performance.

Different terms (objectives, strategies, themes, and initiatives) describe these directions, but the key is that they involve achieving or doing something. As a result, they usually can be measured. Targets and indicators should be established so that the board will know when these directions are successfully implemented and intended results have been achieved.

## 3. *Approving Major Decisions*

The board still reviews, questions, provides advice to shape, and approves major decisions and commitments of the hospital. Not everything important or strategic can be anticipated in a strategic plan.

- Some of these decisions may simply implement the strategic framework and directions, and hence, are consistent with the strategic plan.
- Others are decisions that may emerge unexpectedly or between planning cycles. In making these decisions, the board may set precedents that steer the hospital toward a different vision or mission.
- In either case, the board still needs to exert its strategic big picture view in determining whether the decisions and directions are sound and in the best, long-term interests of the corporation.

## **Strategic Planning: its Place and Timing**

Strategic planning is a disciplined process to define the purpose and direction of an organization, recognizing the current and future state of the external and internal environment within which it operates. Yet, how often and when should a hospital undertake such an effort? Considerations relating to the timing of strategic planning include the following:

- Strategic planning at the hospital-wide level, which is relevant for the board, is a major undertaking.

- The planning process is a major investment of time and effort in research, analysis and discussions.
- It typically takes between six to eight months and often longer.
- There is typically broad consultation with stakeholder groups inside and outside the hospital.

A regular strategic planning process is an effective way for the board to discharge its strategic oversight role:

- From time to time, the board needs to undertake a major rethinking of its strategic oversight framework and direction for the hospital.
- Annually, the board needs to review the strategic plan, and provide any relevant updates based on new information or events.
- Annual updates to the strategic plan provide a natural predicate to the operational and program planning and budgeting cycle.

The time horizon for a strategic plan can vary:

- Strategic plans can be prepared to cover any time horizon—typically between three and 10 years. In recent years, organizations have been preparing plans for three to five years.
- The environmental scan, or the forecast of what the future environment will look like, may project out further than the strategic plan. Organizations frequently look out 10 to 15 years as a basis for thinking about what to do in the next five years.

The useful life of a strategic plan varies, and a new strategic plan is needed when the board deems that it is needed:

- The assumptions underlying the contents of a strategic plan can be overtaken by events and new developments. Therefore, strategic direction can be rendered irrelevant within two or three years.

- Sometimes major, externally dictated changes and events provide the hospital with a new direction—for example, mergers or affiliations. In these cases, the board and management need to focus on providing direction for implementing the change, and there may be little point in developing a new strategic plan.
- While there is no formula or requirement for when the board should develop a new strategic plan, many organizations undertake a major strategic planning process every three to five years.

## The Strategic Planning Process

### Components

When a hospital undertakes a major strategic planning process, typically the components are as follows (also shown in Figure 1 on page 53):

1. Situational Assessment or Environmental Scan
2. SWOT – Strengths, Weaknesses, Opportunities and Threats
3. Strategic Issues
4. Strategic Directions
5. Implementation Timetable and Plan

### 1. *Situational Assessment or Environmental Scan*

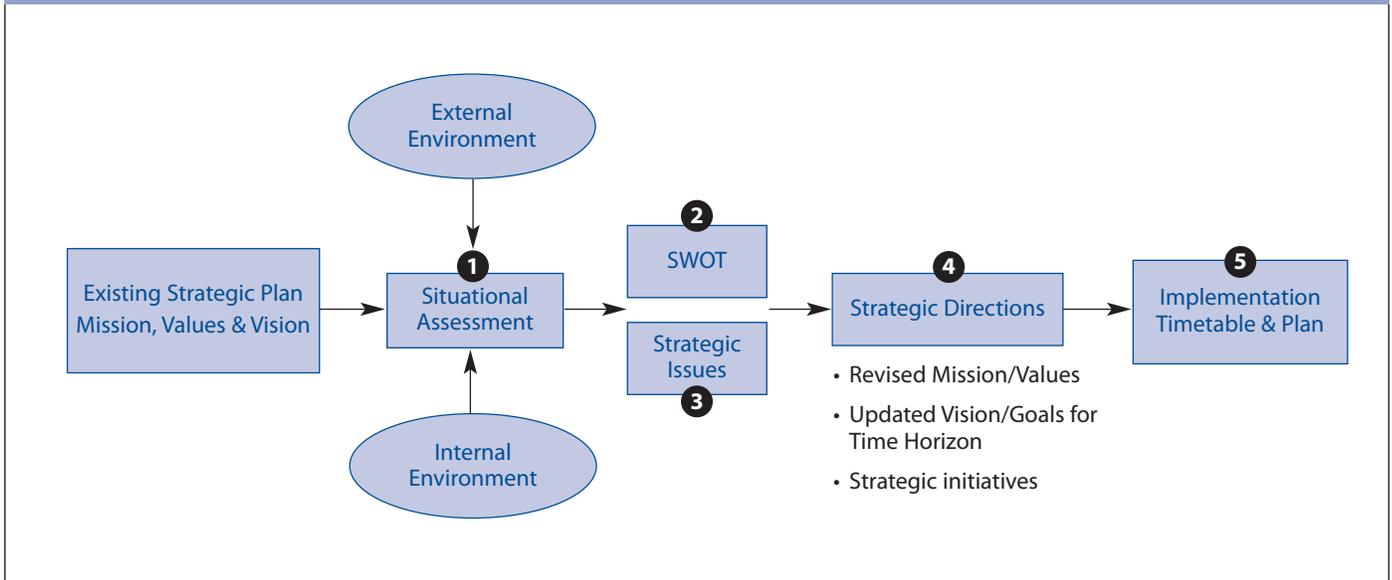
The starting point for a strategic review is the existing strategic plan, if relevant; the existing mission, values and vision statements or goals; and other relevant strategic directions or mandates.

A situational assessment describes the context for the hospital from both an internal and external perspective. It should include a review of the current situation, trends and forecasts of emerging trends.

An internal assessment or scan includes:

- Recent performance on patient care.
- Financial condition and performance.
- Asset and infrastructure condition.
- Information technology capability.
- People strengths and capacity.

**Figure 1: Generic Process**



- Innovation and new programs
- Education and research, as appropriate
- Community and stakeholder relationships

An external assessment or scan includes:

- Health sector trends
- Funding trends
- Legislative changes and possibilities
- Population health indicators
- Patient usage of alternative hospitals and care providers
- Technology trends
- New health providers

## 2. *SWOT — Strengths, Weaknesses, Opportunities and Threats*

A situational assessment is often summarized in the form of a SWOT analysis. This sets out the highlights from the assessment in a simple, four-box format. The strengths and weaknesses tend to come from the internal assessment, and the opportunities and threats from the external environment.

## 3. *Strategic Issues*

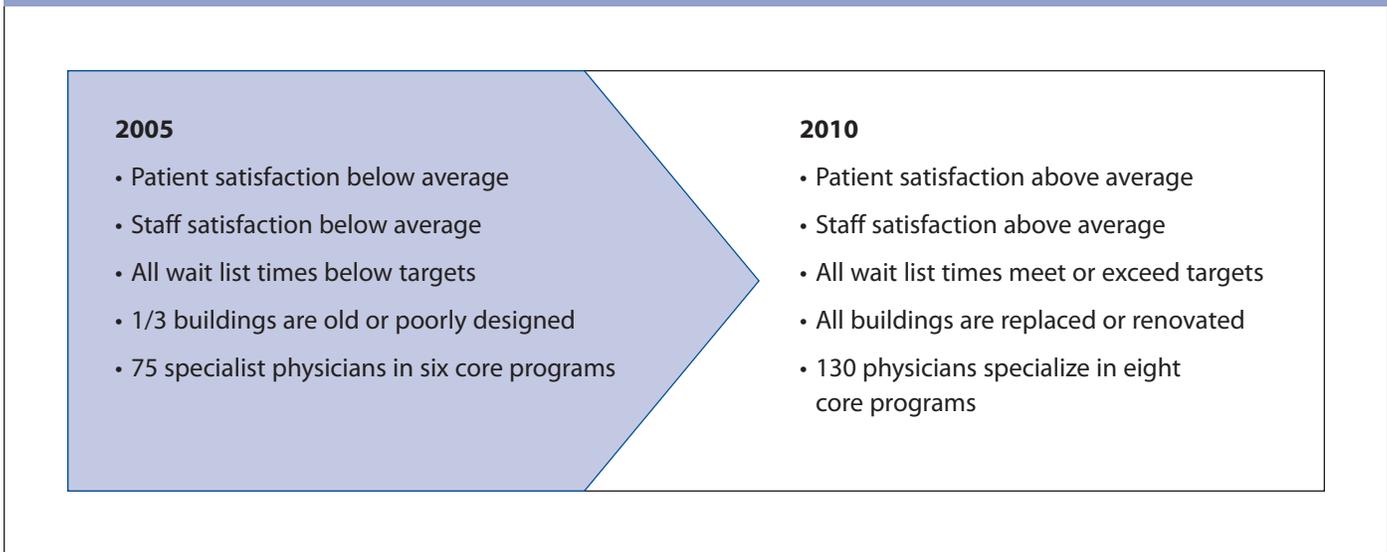
The core of a strategic plan is the identification of strategic issues that need to be addressed. Strategic issues may include the following:

- Common themes from the environmental scans. The situational assessment, and especially the SWOT summary, helps to identify these issues, but there is more art than science in deciding on which issues to focus attention.
- Gaps in balanced scorecard performance or benchmarks. If the hospital has a balanced scorecard or outcome/results measurement system, the assessment can include a review of recent performance and projection of future performance against these measures. Likewise, gaps in performance with benchmarks from peer group hospitals may be considered.
- Key success factors to advance toward the identified vision. Given a relatively clear description of the future vision, it is possible to identify what factors need greater attention.

## 4. *Strategic Directions*

This component may be organized in various ways, depending on how the issues are set out. Every

**Figure 2: Making Vision Concrete, Comparison 2005 to 2010**



hospital will need to find the format that suits its mission, role, programs and issues. Regardless of the format, the resulting list of strategic directions, objectives or initiatives should reflect the following:

- A revised vision or goal that describes the hospital or health system at the end of the planning period. This should be concrete and measurable wherever possible. An example of this concrete vision is shown in Figure 2.
- Directions set out areas of action and investment in time, energy, and dollars.
- Each strategic direction should spawn a number of action areas or initiatives, which will likely require an extensive period of time—one to three years or more to complete.
- The action needs to start in the next year and continue, although the results may accrue primarily in the medium or long-term.
- Wherever possible, concrete, specific targets should be set as a basis for measurement or judging whether the objectives are accomplished.

### 5. Implementation Timetable and Plan

Many strategic planning processes stop here. However, there is general acknowledgement that the

strategic plan needs to be linked to the implementation process, for example, through the following steps:

- Establish a timetable for implementation.
- Define milestones in terms of accomplishments—measurements or descriptions of success for Year One, Two and Three that can be evaluated.
- Assignment of accountability for implementation.
- Definition of risks and need for reporting back and monitoring by the board.

### Process Characteristics

Major strategic planning processes are significant undertakings for any organization, especially a hospital. There are a number of characteristics that should be considered in designing these processes.

#### 1. Simplify by Breaking the Situation Assessment into Major Components

- Sometimes, the assessment and development of themes can be organized to reflect the day-to-day operation of the hospital to simplify internal and external scanning, and discussion of implications.

- For example, use roles (research, education, patient care, and local system collaboration), services/program groupings (women’s health, heart, oncology, mental health, etc.), or functions (clinical services, IT, Human Resources).

## 2. *Broad Consultation is Preferred and Beneficial*

- Strategic planning is a major opportunity for hospitals to engage their stakeholders and community in their mission and to build support.
- Broad consultation improves the diversity of thinking and ideas, and enhances the quality of the assessment process.

While beneficial, this effort needs to be balanced since this is where a significant degree of energy and time is invested in terms of using internal staff to organize meetings and collect information.

## 3. *Open and Participative Process*

- While not everyone can be involved in all aspects of the planning process, there must be open communication about the process, the initial findings and the preliminary conclusions.
- As many channels of communication should be used as possible to increase awareness, understanding, and buy-in to the process and its results. For example, paper or Web surveys, focus groups, community consultations, e-mail updates, newsletters, and presentations can be used to get input in and information out.

## 4. *Keep a Focus on the Big Picture*

- Strategic planning generates a lot of information and analysis. However, going back to the strategic big picture should be emphasized.
- Focus participants back to the fundamental questions about the values, mission and vision, and success measurements—what does this mean for our purpose, how well we are doing, how well will we do in the future? Should we change?

**Figure 3: Table of Contents, Strategic Plan**

- A. Introduction — describing planning process
- B. Internal Scan — highlights
  - Current description of programs, resources and results
  - Trends and emerging issues
- C. External Scan — highlights
  - Health system and other health care providers
  - Funding
  - Population and patients
  - Technology
- D. Overall — SWOT and Scenarios
- E. Future Strategy
  - Mission, values and vision
  - Goals for 20XX
- F. Strategic Directions/Initiatives — each with targets and timetables
  - Clinical programs and hospital-wide services
  - Research and education (if applicable)
  - Facilities/capital
  - Technology
  - Organization and people
  - Community and health system relations (if applicable)
- G. Overall Targets and Timetables
- H. Benefits and Risks — contingency plans

## **Communicating the Strategic Plan**

From a strict governance point of view, a strategic plan articulates the board’s strategic direction to hospital management. The plan needs to be clear and comprehensive. The table of contents of a typical plan is provided in Figure 3.

The board also must communicate the strategic plan to other audiences beyond management. Those audiences include members of the community, patients, staff, and others who need to know the hospital's strategic direction. To do that, the board should ensure that a summary plan is prepared. That version of the plan must be plain speaking, possibly in a number of languages, and still communicate the essence of the strategic direction.

Potentially, there may be a number of formats to communicate the contents of the strategic plan:

- A pamphlet format highlighting strategic directions.
- A brief summary in booklet format covering more details of strategic directions, including programs.
- A Web-based version with the ability to go deeper into specific topics.
- A staff presentation to community groups and other organizations.

Whatever format is used, the highlights of the strategic plan need to be effectively communicated to stakeholders as a basis for reporting on progress and accountability.

### **Annual Updates or Reviews of Strategic Plans**

Hospitals typically undertake a major strategic planning process once every three to five years. However, once a strategic plan is in place, it is a living document subject to review and revision as needed.

The strategic plan should be reviewed annually by the board as part of a regular annual planning cycle:

- A strategic plan review should occur prior to the annual operational planning and budgeting cycle.
- The board should review progress made on strategic directions and identify any major actions required.
- The board may modify strategic directions and priorities based on new knowledge, developments and external events.

- Implications of the review process should be written and communicated clearly to the organization as a basis for annual operational and budget planning.

The board should have regular briefings on progress in implementing strategic plan directions and initiatives:

- Progress should include measurements where possible.
- “Regular” may mean quarterly, or it may mean one or more directions are reviewed at regularly scheduled board meetings.

When considering any major decision, investment or change, the board should consider its implications for the strategic plan and the mission, vision and values, if relevant.

### **Management Leads the Strategic Planning Process**

As noted above, managing a strategic planning process is a major undertaking. While the process is critical to the board, the board cannot lead the entire process itself.

For example, the process of consultation and environmental scanning requires a significant effort from staff to organize and conduct. Likewise, the technical knowledge needed to understand the potential future environment may reside in the hospital's professional staff.

It is management's role to conduct the planning process and the board's role to shape, oversee and approve it. Therefore, the CEO and senior staff will need to manage the overall process and ensure that adequate support is provided.

### **Board's Participation in the Strategic Planning Process**

While the CEO may lead the work, the board cannot fully delegate its duty to oversee the development of strategic direction for the hospital. Approving a strategic plan is an important part of the board's role, and board members need to be

prepared to judge the soundness of the strategies contained in the plan. Therefore, the board must be adequately engaged in, and knowledgeable about, the strategic planning process to render judgments about the plan.

The board, as a whole, should participate at the following key points in the strategic planning process:

- The board approves the strategic planning process, including the establishment of a steering committee if so desired, and any preliminary areas of focus.
- The board participates in a dialogue, often at retreat(s) at key points in the process—at least in the formation of strategic directions.
- The board receives findings and updates on the process at regular board meetings.
- The board receives the final draft plan in advance, has opportunities to question its contents and suggest modifications, approves the final strategic plan, and directs the CEO on plan implementation.

The board should have learning opportunities built into the process as part of its participation. The strategic planning process heightens the board's interest and provides opportunities to inform and educate board members on what is happening in the hospital's world. Opportunities for learning about the health care environment, hospital programs and operations should be built into the strategic planning process. This may happen as a part of regular board meetings or by holding retreats for the board and senior management.

### **Establishing a Strategic Planning Steering Committee**

A Strategic Planning Steering Committee is typically established to oversee the strategic planning process.

The Steering Committee can assume a number of roles including:

- Organizing the strategic planning process and major events, such as retreats.

- Assigning groups to undertake consultations and analysis.
- Preparing or approving summaries of scans, workshops and retreats.
- Preparing or proposing optional directions, changes to mission, vision and values, based on board input.
- Overseeing sub-committees conducting parts of the strategic assessment work.

The Strategic Planning Steering Committee may be composed in various ways, including the following:

- A board committee with the CEO and chief of staff.
- A combination of board and senior staff, including physicians.
- A mixed group with some representation of board, senior staff, physicians, professional and administrative staff, and possibly one or more external representatives.

Having a board member (possibly a candidate for future chair) and the CEO or a senior staff member co-chair the committee is suggested.

In some cases, a more elaborate planning structure may be needed. An example of one such structure from an urban teaching hospital is shown in Figure 4.

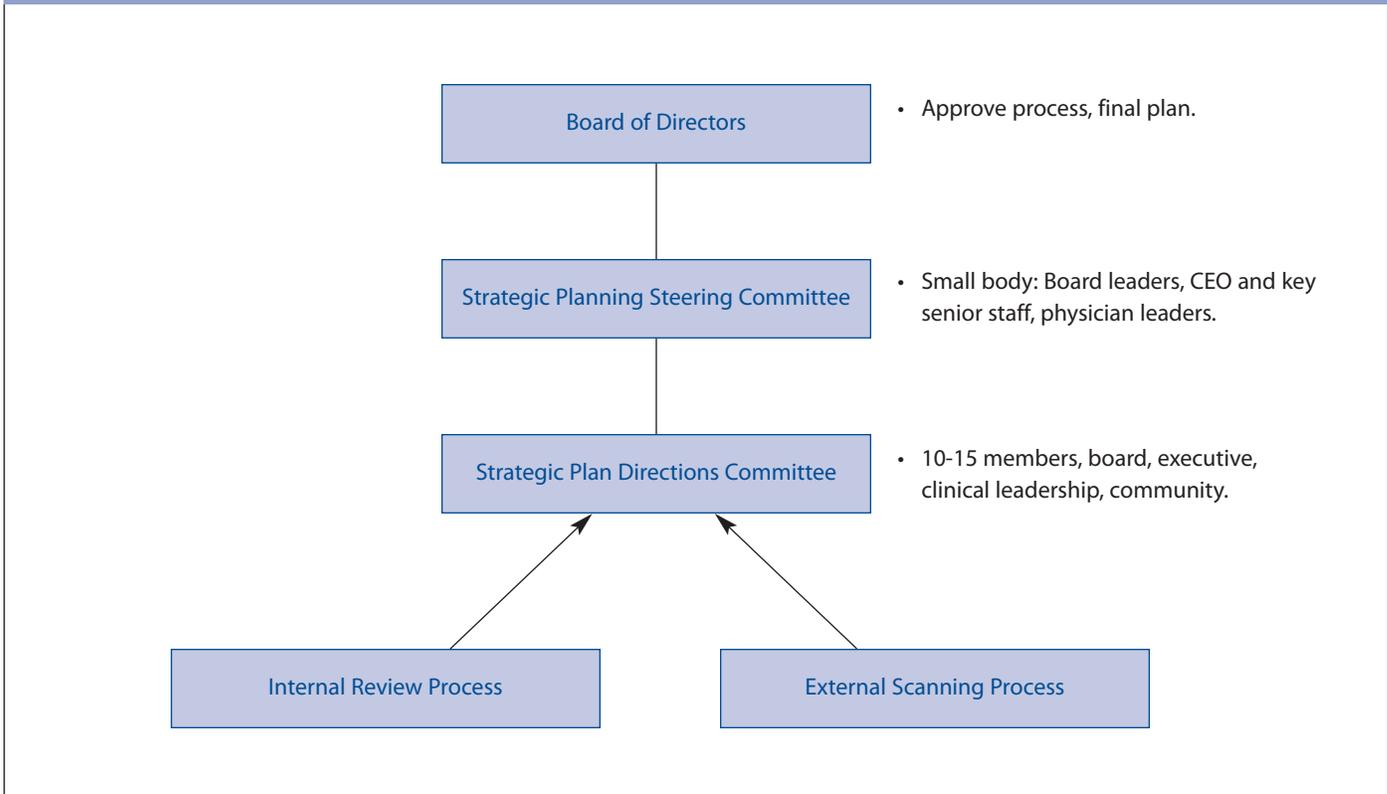
### **Frequently Asked Questions**

#### **1. *What should the time horizon for a strategic plan be — three, five, 10 years or longer?***

Deciding the time horizon for a strategic plan is somewhat arbitrary. The following principles should be considered in making that decision:

- No matter what the time horizon, strategic initiatives should include action for at least the following year.
- The environmental scan should look as far forward as possible, no matter how long a time period the plan covers. Understanding the potential future consequences of today's strategic actions is part of the strategic thinking process.

**Figure 4: Strategic Planning Structure**



- Long-term time horizons can induce greater creativity and freer thinking. On the other hand, longer horizons may not address the practical constraints and realities faced by the organization.

Most hospitals tend to create strategic plans with a three-year time horizon, while some of the environmental scanning and scenarios used in the process have a longer-term perspective.

## 2. *What is scenario planning and how does it fit in with strategic planning?*

Scenario planning is simply a form of strategic planning, which is helpful in certain situations. Scenario planning has the following features:

- It develops a number of alternative descriptions of how the future environment will unfold. These options are usually based on some critical environmental factors (technology, government decisions, and disease or health trends), which

are uncertain. So, the future is described based on whether a factor goes one way or another.

- Those considering each scenario think through what the organization should do to succeed under the conditions described in the scenario.

Then, strategic actions taken under all scenarios are compared. If some are the same under any likely scenario, then the uncertainty is irrelevant. If they are not, the organization needs to consider some incremental steps or contingency approaches to its strategic directions.

Scenario planning is useful in the following situations:

- Where major changes, for which the organization needs to prepare despite the level of uncertainty, are underway.
- Where scenarios show there are obvious successful actions that work, no matter which way an outcome goes.

- Where uncertainty is blocking creative thinking about the future.
- Where there is a need to broaden people's thinking.
- Where significant, inevitable trends are not being considered by the organization—for example, lack of specialist physicians, remote telehealth, new populations, and so on.
- Where there is a need to consider key issues and create positive scenarios and response strategies for the hospital.

### 3. *Given that directors are not hospital experts, what should board members question or look for in reviewing a draft strategic plan?*

While directors may not be experts in hospital management, they can play an important role in questioning the usefulness of a proposed strategic plan. These three lines of questioning are examples of what a director may wish to consider.

1. **Are the assumptions reasonable?** Great plans start with reasonable assumptions about the future and build from there. Poor ones do not. Directors need to identify the fundamental assumptions underlying the thinking in the plan, and ensure these make sense. Sometimes, assumptions are not clear or well supported in the plan—for example, what is the expectation about government reimbursement, or about the capital available to support facilities and equipment plans, or the availability of specialists to support new clinical programs or program expansion?
2. **Are the plans clear and concrete?** Strategic plans tend to deal with high-level directions. However, they should still be clear and describe actions to be taken in the near term. Plans that propose all action to occur two or three years out are not as meaningful. Directors should ask about what is being done to prepare for the next year. Sometimes, the implementation or success of planned initiatives is difficult to judge. While not everything can be measured quantitatively, strategic initiatives should be sufficiently clear and concrete for the board to review whether they have been implemented within a given time period and whether they have had some impact. If not, board members should ask that they be made clearer so that progress can be assessed.
3. **Ask about “what ifs” and secondary effects.** During the planning process, alternative assumptions and contingencies should be considered. This is part of what scenario planning is about. However, if scenario planning is not undertaken, board members need to ensure that critical “what if” questions are asked, and that management has considered them and is prepared to address them. “What ifs” are often about surprise or low-probability events. However, a related concern is the secondary effects or consequences on others of the implantation of the plan. For example, how will other hospitals or community organizations react to the plan? How will their actions or views affect the hospital and the effectiveness of the strategic plan?

# The Board's Role in Performance Oversight and Measurement

One of the board's roles is to oversee performance, especially in terms of quality of care and financial condition. This section spotlights the importance of performance measurement as a tool in executing this role.

## Performance Oversight and Measurement Processes

Performance oversight involves setting performance objectives, reporting actual performance results, and assessing whether corrective action is needed based on the results.

Performance measurement is the discipline of establishing measures and indicators that quantify the performance objectives as a basis for planning targets and monitoring actual results.

Measurement, therefore, supports the performance management and oversight process by providing information for assessing and making judgments about whether actual progress is adequate and what corrective action is needed.

## Board's Performance Oversight Responsibilities

The board must oversee the performance of its six key areas of responsibility:

1. How performance affects mission, vision and values
2. Performance of the CEO
3. Quality of care and services
4. Financial condition
5. External relationships
6. The board's own effectiveness

To properly oversee these, the board needs to establish a process for monitoring and assessing actual performance in each of its areas of responsibility on a regular basis. The process should include:

- Tools for assessment.
- Measures and indicators.
- Assigned responsibility for providing information.

The board should use measures wherever these can support its ability to assess and make judgments about its key areas of responsibility. Suggestions concerning the value of measurement in these areas are indicated in Figure 1 on page 61.

While the board's overall performance oversight role involves qualitative assessment, major areas that require measures, as shown in Figure 1, are Financial Condition and Quality of Care and Service.

## Balanced Scorecard Approach

The balanced scorecard approach was initially developed by Robert Kaplan and David Norton for use in the private sector to ensure corporations considered non-financial performance. [See *The Balanced Scorecard: Translating Strategy into Action* by Robert Kaplan and David Norton (1996, Harvard Business School Press)].

The idea is essentially that financial performance is a lagging indicator of success while others, such as staff satisfaction and new product innovations, are leading indicators. Therefore, top management and the board need to watch these latter two indicators since they predict how well the company will do in the future.

The four standard perspectives proposed by Kaplan and Norton are:

**Figure 1: Board Responsibilities**

Board Responsibility Areas	Board Approach to Performance Oversight	Use of Measures
Mission, Vision, Values and Strategic Directions	Direct role of board to assess implementation of the strategic plan at least annually.	Must assess qualitatively and quantitatively, if possible, the progress in implementing the strategic directions and initiatives, and accomplishing goals where these are measured.
Executive Performance	Performance of CEO through annual evaluation.  Oversee executive performance through assessment of hospital results.	For a discussion of tools, see Chapter 6.
Quality of Care and Services	Essentially an aspect of hospital performance and, therefore, related to executive oversight.	Board needs performance measures and indicators to monitor performance against commitments.
Financial Condition	Essentially an aspect of hospital performance and, therefore, related to executive oversight.	
External Relationships	Direct role of board to consider quality of external relationships with key stakeholders.	Qualitative assessment of quality of relationships.
Board's Own Effectiveness	Various aspects to consider – essentially a qualitative assessment of board processes and effectiveness.	For tools used, see Chapter 10.

1. Customer perspective
2. Financial perspective
3. Internal business perspective (processes and capabilities)
4. Innovation and learning perspective

In this approach, top management develops a few objectives in each perspective area that are consistent and support the organization's vision, mission or strategic direction. For each objective, measures are developed with performance indicators that can be

used to evaluate progress and achievement. Many hospitals have adapted the balanced scorecard approach to their situation, and report that it is serving them well.

### **Factors Influencing Performance Measurement for the Board**

The board oversees hospital performance through its oversight of executive management's overall performance. For the board to oversee management's performance, it requires measures that indicate results.

There are a number of factors that must be considered in framing a performance measurement system that supports a board to carry out its oversight duty.

### **Linkages Between Strategic Planning, Annual Plans and Monitoring Performance**

A sound performance oversight, management and measurement system should connect the strategic plan to annual operating performance:

- Strategic plans should have measures of performance for a longer time period (three to five years).
- As part of the strategic plan, there should be milestones that correlate to progress toward the five-year vision (i.e. identify what should be achieved by the end of Year One and Year Three, etc.).
- Annual operating plans should establish corresponding one-year targets, possibly broken into measures of quarterly achievement.

### **As Simple as Possible**

For purposes of reporting to the board, the measurement system should be kept as simple as possible. Too many measures can create too much complexity. Unless meaningful to the board, complex systems end up being ignored.

However, the reality is that hospitals are complex businesses. Simple measures, like return on investment, often are not available or can prove inadequate. An excessively simple approach to overseeing performance, supported by a few simple measures, will not allow the board to do its job.

In fact, hospitals have highly developed measurement systems covering the scope of their operations.

The problem is that there are few “roll-up” measures that represent a more holistic assessment of overall performance. The reasons for this include the following:

- The scope of programs and services in hospitals is broad, and to some degree each program and service must be considered separately—for example, cancer, heart, and emergency. One cannot meaningfully develop a summary measure[s] for how well all programs are doing without masking something.
- Patient outcomes and care are difficult to measure directly in a short time period, so proxies such as patient satisfaction, readmission rates, and length of stay are used as a way to infer success.
- All performance measures may not be monitored over identical time periods. Some may be reviewed monthly or quarterly (e.g., wait times), while others may need to be monitored annually (e.g., new program development approvals or research funding).

The reality is that a simple indicator cannot judge most non-financial measures, such as organizational health or innovation. Therefore, a number of more targeted indicators are used to suggest whether aspects of organizational health are sound.

As a result of this complexity, there are more measures to deal with, and the board cannot be certain that these indicators tell the full story unless it probes deeper.

### **Ingredients of Good Reporting**

A measurement and reporting system should be developed to provide the following information:

- Actual performance compared to planned results (targets).
  - Actual performance compared to available benchmarks (such as performance of other hospitals).
  - Actual performance compared to acceptable standards or ranges.
  - Variances to the above, clearly shown.
- Commentary from management should be provided to explain significant variances reported.

**Figure 2: Common Hospital Performance Measures**

Patient Access and Outcomes	Financial Health
<ul style="list-style-type: none"> <li>• Patient satisfaction</li> <li>• Service volumes, e.g., ED visits, day surgery, etc.</li> <li>• Readmission rates</li> <li>• Average length of stay</li> </ul>	<ul style="list-style-type: none"> <li>• Total margin</li> <li>• Actual to expected cost per weighted case</li> <li>• Administrative expenses as a percentage of total expense</li> <li>• Current ratio</li> </ul>
Organizational Health	Innovation and Development
<ul style="list-style-type: none"> <li>• Staff and physician satisfaction</li> <li>• Staff turnover</li> <li>• Staff status (full-time to part-time, especially nursing)</li> <li>• Safety record</li> </ul>	<ul style="list-style-type: none"> <li>• Research funding (if applicable)</li> <li>• Fundraising</li> <li>• New programs launched</li> <li>• System integration projects (if applicable)</li> </ul>

Management should be able to provide additional information and measures to respond to more detailed questions, given the complexity of the measurement issue discussed above. For example, management could provide details on all programs with respect to a measure of length of stay, so that the board can understand what is causing the variances.

### Designing a Board Performance Measurement System

Hospital boards should consider the use of the balanced scorecard approach for fulfilling their performance oversight responsibilities. Each board needs to customize the approach to its strategic plan and circumstances. To do so, boards need to rely on executive management to develop an approach and methodology for its approval. Figure 2 shows some common measures for each area of the balanced scorecard.

### Performance Reporting Systems

Whether or not the hospital uses a balanced scorecard approach, the board needs a simple and

clear reporting system to monitor overall hospital performance.

The reporting system can be displayed as a “dashboard” with a few key performance indicators in all key areas as a basis for board oversight. The dashboard needs to be constructed so the board can readily identify the key variances and issues related to actual performance.

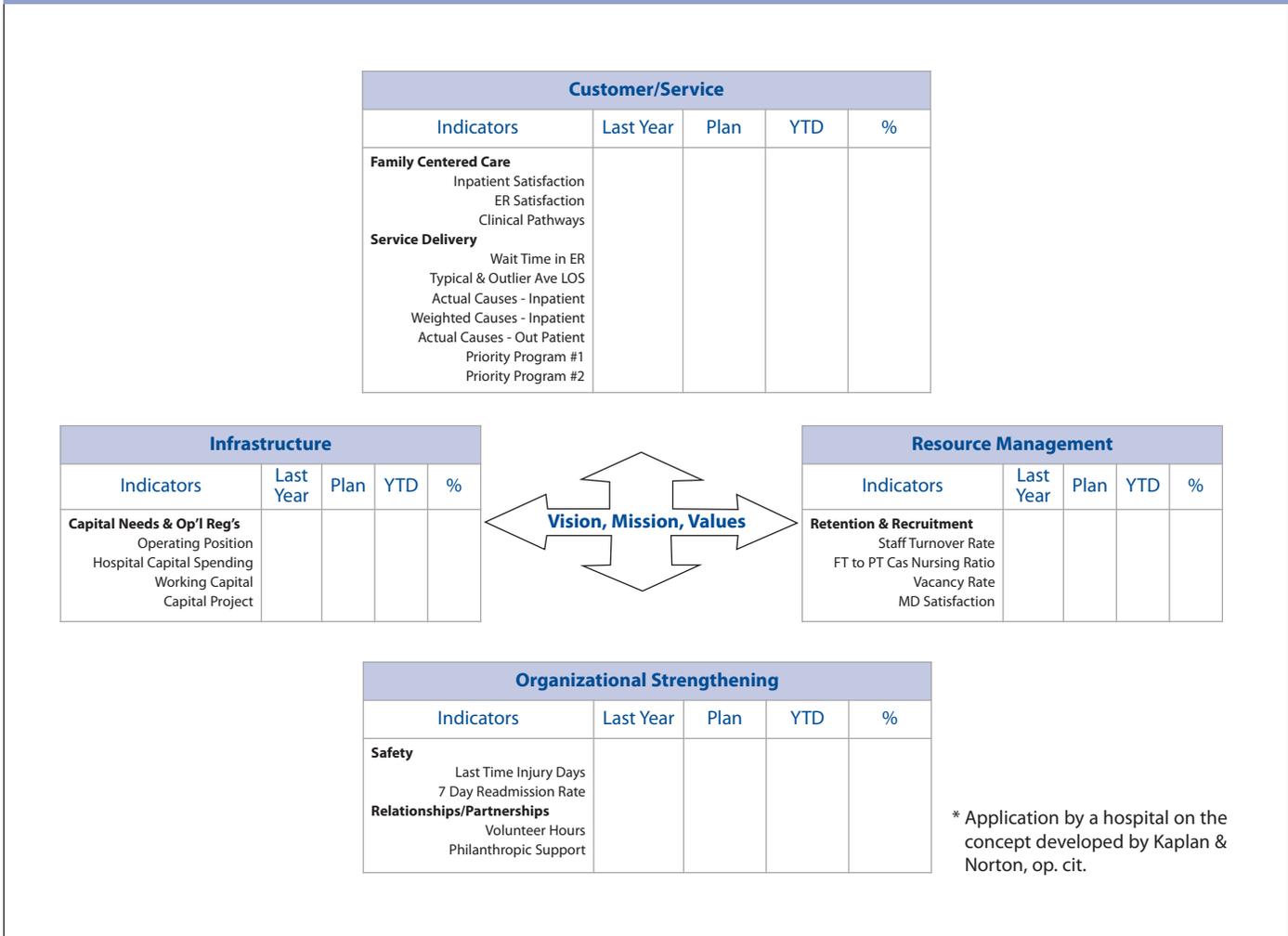
### Illustrative Examples of Corporate Reporting Dashboards

Two approaches to reporting corporate performance results are described briefly. Ideally, boards should receive the key measures of performance shown on a one-page dashboard. This provides for ready assessment of operational status.

#### 1. *Balanced Scorecard Approach*

In Figure 3 on page 64, an example of a balanced scorecard (adapted from a multi-site community hospital) is displayed on one page, showing indicators of success within each of the four perspectives.

**Figure 3: Balanced Scorecard**



## 2. Color-Coded Dashboard

Some dashboards display performance using colors to further simplify board interpretation. Performance on each indicator might be shown as follows:

- Blue means performance is okay—above standard or within the expected performance range.
- Light blue means warning, suggesting performance is below standard or low in the range.
- Black means trouble or below standard.

Effective application of this approach requires pre-defined rules about when each color is used. The pre-established criteria or standards for judging performance variances will determine how the reporting looks each month or quarter. So, the

board needs to understand how rigorous those standards are.

The dashboard example shown in Figure 4 on page 65 was adapted from a teaching hospital. It uses the color scheme approach.

### Use of Performance Oversight and Measurement Outcomes

The board's prime role is to oversee how well the hospital is doing in accomplishing its goals. Therefore, the board needs information, and it must act to ensure such information is made available to discharge its responsibilities.

However, what is the board to do as a consequence of the information it receives? There is no black-and-

**Figure 4: Illustrative Dashboard**

Indicator	Target Benchmarking	Q1	Q2	Q3	Q4
<b>Customer</b>					
Patient Satisfaction – inpatient overall		Dark Gray	Light Gray	Dark Gray	Dark Gray
Pain Management		Black	Black	Black	Black
Wait Times		White	White	White	White
• Average Length of Stay in Emergency Department (in hours)		Dark Gray	Light Gray	Light Gray	Light Gray
• Average Length of Stay in Emergency Department until admission to in-patient bed (in hours)		Dark Gray	Black	Black	Black
• Hips (days)		Light Gray	Light Gray	Dark Gray	Dark Gray
• Knees (days)		Black	Black	Light Gray	Dark Gray
• Cancer (days)		Black	Light Gray	Dark Gray	Dark Gray
• Cataract (days)		Dark Gray	Dark Gray	Dark Gray	Dark Gray
<b>Internal Hospital Process</b>					
Infection Rates		White	White	White	White
• Rate of Hospital Acquired X		Dark Gray	Dark Gray	Dark Gray	Dark Gray
% Tertiary and Quaternary Care		Dark Gray	Light Gray	Light Gray	Light Gray
Total Volume		Dark Gray	Dark Gray	Dark Gray	Dark Gray
• Inpatient		Dark Gray	Dark Gray	Dark Gray	Dark Gray
• Emergency		Dark Gray	Dark Gray	Dark Gray	Dark Gray
• Other Ambulatory		Dark Gray	Dark Gray	Dark Gray	Dark Gray
FTE Vacancy Rates		Black	Black	Dark Gray	Dark Gray
Agency Cost for Nursing Staff		Light Gray	Light Gray	Light Gray	Light Gray
<b>Financial</b>					
Surplus (Deficit)(\$000)		Dark Gray	Dark Gray	Dark Gray	Dark Gray
Cost Per Weighted Case		Black	Black	Dark Gray	Dark Gray
Total Inpatient Weighted Cases		Dark Gray	Dark Gray	Dark Gray	Dark Gray
<b>Learning &amp; Growth</b>					
External Research Funds		Light Gray	Dark Gray	Dark Gray	Dark Gray

white answer. For example, the board must respect the line between the board's role and executive management's role. The executive is expected to take corrective action to address operational performance problems. The reality is the board may not have the competence to know what corrective action is needed or warranted. However, where the board judges there is urgency and potential damage to the organization, the board should direct management to take corrective action and closely monitor progress on and results of that action.

Where performance is consistently positive, the board should find ways to acknowledge good performance and reinforce such behavior. Where the information suggests a performance problem related to its own effectiveness, naturally the board would take its own action.

### **Common Areas for Questioning Performance Measures**

The board needs to show care when making judgments based on performance measures. While quantitative measurement of results is necessary and useful, the board will still need to consider the meaning of variances in measurement indicators. Some reasons for greater scrutiny or questioning include:

- Indicators are sometimes constructed to only partially reflect what is happening. For example, staff turnover is only one indicator and may not reflect the general quality of staffing or the care staff provide.
- Indicators may be aggregated so they reflect overall results, which may be caused by one program. In short, an overall positive score may mask serious performance issues in one or more programs. Board members may need to find out how many programs are meeting or exceeding targets or standards.
- Some indicators may show changes over a longer period of time, and improvement cannot be expected every quarter. In these cases, the board needs to assure itself that the activities that will promote success are being undertaken with discipline.

- Uncontrollable external factors may be causing variance in performance. It is important that this be acknowledged and understood. The board may be interested in why the external uncertainties were not predicted or provided for in the original plan.

Boards need to make sound assessments about the meaning of measurements reported and, therefore, should rely on management to explain variances, their causes, and potential corrective actions to be considered (including taking no action at all).

### **Frequently Asked Questions**

#### ***1. How many measures are appropriate for the board to review?***

The board should monitor as few measures as possible. Conventional wisdom in the private sector suggests using six to eight key measures of overall organizational performance.

Nonetheless, hospitals are complex businesses with many programs and services. Therefore, it is not possible to arbitrarily limit the number of measures. It is also important to recognize that the measurement map or hierarchy is like an iceberg with only part above the water (the part reported to the board) and much below. Therefore, each senior manager will have many additional and more detailed measures to monitor within his or her program or function. This will cascade down the organization into further detail that aggregates up to the top.

The principle is the fewer the better as long as measures are meaningful, relevant and sufficient indications of hospital performance. Most hospitals should strive to keep the number to ten or fewer or use simplifying methods, such as the color-coding scheme shown on page 65, to promote ease of understanding and interpretation.

Where there are performance issues, the board will need to ask for more detailed information and the number of measures considered will likely increase.

# The Board's Role in CEO Evaluation

One of the board's roles involves overseeing generally the organization's human capital, and specifically selecting and supervising the CEO. This section focuses on one aspect of this board role—the evaluation of the CEO.

## Need for an Evaluation Process

The CEO is hired by, reports to and is accountable to the board. The board supervises the CEO, who should be the board's only direct report. Board responsibilities include selection, overseeing annual objective setting, determining compensation and incentives, identifying learning or development plans, and being prepared for the CEO's succession.

An evaluation or appraisal process is critical for the board to discharge its overall responsibility to oversee the CEO's performance.

There are two prerequisites for the evaluation and appraisal process:

1. Existence of an up-to-date job description outlining the responsibilities of the CEO, preferably in key result areas.
2. A process to set goals and objectives for annual performance in specific and measurable terms. Such a process should take into account the goals and objectives established in the existing strategic plan.

## Benefits of an Evaluation Process

Undertaking an evaluation process provides the following benefits:

- Clarifies expectations between the board and the CEO.

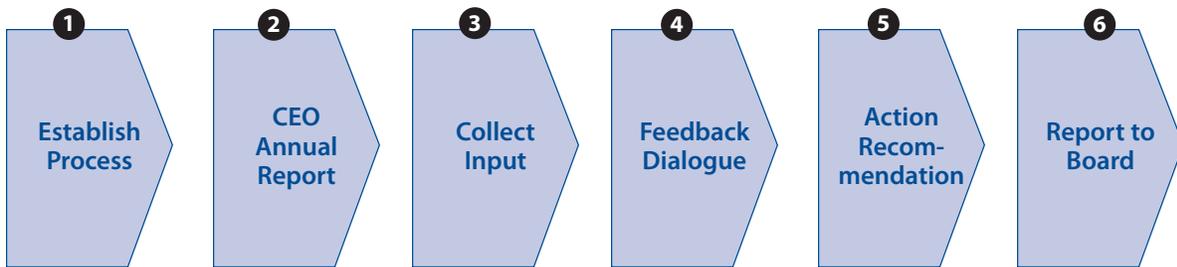
- Provides feedback to the CEO as a basis for continuing positive performance assessment and taking corrective action.
- Forms a basis for establishing an objective, professional relationship between the board and the CEO, and for increasing trust.
- Forms a basis for providing the CEO with developmental support, where helpful.
- Provides an objective and fair basis for determining base and incentive compensation.
- Provides a basis for addressing the issue of succession planning in a timely way.

## Principles of the Process

In designing and conducting the evaluation, the following principles should be considered:

- The CEO and the board need to agree on the evaluation process, including the criteria to be used (see criteria discussion on page 69), who is to be involved in providing feedback, and how feedback is to be used.
- The board needs to approve the evaluation process.
- The chair of the board typically leads the process and is involved in providing performance feedback to the CEO.
- The board may delegate the conduct of the process to a board committee, such as the Executive Committee.
- The board needs to be assured that the process is undertaken and completed and should ratify any decisions emerging from the process. Once the process is confirmed, the board evaluates the CEO in accordance with the process and criteria adopted for the evaluation.

**Figure 1: Six-Step Process**



- Confidentiality and respect for the position of the CEO needs to be maintained to ensure trust is built, and authority of the position is not diminished.
- The board should also meet periodically throughout the year in executive session to discuss the CEO’s performance and then provide feedback to the CEO.

### **A Six-Step Evaluation Process**

The evaluation process may take place over two or three calendar months. The process, set out in Figure 1, typically follows the six steps described below.

#### **1. Establishing the Process**

Annually, the CEO and board representative (chair) should mutually agree on the process for the year. The agreement about the process needs to cover the criteria to be used, (as discussed in the next section), the tools, and the sources of input to the process.

#### **2. CEO Reports Annually on Results and Next Year’s Plans**

Part of the process of evaluation is an annual “state of the union” report from the CEO to the board on the discharge of his or her duties, and the results of his or her performance. The CEO should make this report to the entire board as part of the regular annual operational planning process. This report typically includes the establishment of annual objectives for the following year.

#### **3. Collect Input on CEO’s Performance**

Based on the agreed-upon process, information is collected from appropriate sources on the CEO’s performance.

#### **4. Digest and Dialogue on Feedback**

Once collected, the board chair and/or designated board committee summarizes and analyzes the feedback. The summary forms the basis for a dialogue with the CEO about the feedback and its implications.

#### **5. Determine Recommendations for Action**

Based on the dialogue, a number of actions can be taken:

- a) Actions related to CEO development that respond to feedback issues or CEO-identified needs.
- b) Recommendations related to compensation as provided in the CEO contract or terms of employment.

#### **6. Report to the Board**

Finally, the board should be informed of the results of the process.

### **Developing the Criteria for Appraisal**

A fair and sound process of evaluation or appraisal should be founded on an agreed-upon and appropriate set of criteria.

Judging the performance of a CEO starts with a review of the job description and key results areas. An illustration of key results included in CEO job descriptions is shown in Figure 2 (based on a review of sample CEO position descriptions).

However, criteria should not be limited to short-term results. The board needs to evaluate the CEO on a broader combination of factors, including whether the CEO is:

- achieving the key results expected of the job;
- demonstrating the competencies needed to perform the role; and,
- performing the role in a way that will promote the continued performance of expected results in the future.

Fundamentally, evaluation criteria fall under two broad categories:

1. **Achievement of Results** — achieving goals and objectives regarding hospital performance results or successful completion of defined projects. This should be assessed by looking at the results achieved versus the results planned. The results need to be linked to the strategic plan where applicable.
2. **Leadership Behavior and/or Skills Demonstrated** — qualitative judgment of whether the CEO's behavior meets leadership expectations. Competencies expected of hospital or executive leaders may be used as a starting point. The National Center for Healthcare Leadership's (NCHL) Health Leadership Competency Model includes three domains with 26 competencies for administrative and clinical health care leaders and managers. These are listed in Figure 3 on page 70.

Judging the CEO's behavior should include opinions from people in a position to observe and provide valid feedback.

### Customizing a Set of Criteria

While a core set of criteria will likely be common for most CEO evaluations, each board will need to

**Figure 2: CEO Position Description — Key Results Areas**

#### CEO Key Results

- a) Level and quality of services delivered within approved budget.
- b) Strategic direction in place, clear and supported by key stakeholders.
- c) Cost-effective and sound administration of human, material, and financial resources.
- d) Effective and collaborative relationships with appropriate agencies and organizations in the community.
- e) Effective and collaborative relationships with the medical staff leadership and medical staff organization.
- f) Respectful and effective board relations.

determine its own list of criteria. For example, teaching hospitals may have more criteria than community hospitals related to research and education. Some hospitals may desire a longer list of knowledge, skills and abilities, while others may choose a simpler list. The point is that each list should include a broad spectrum of the competencies a CEO needs to demonstrate.

An illustrative set of criteria, adapted from a community hospital, is shown in Figure 4. This set includes hospital development since the hospital was moving through a lengthy construction and redevelopment phase.

### Designing the Evaluation Process

Once the criteria are established, the rest of the process must be designed. Five components warrant some discussion and careful consideration:

1. Sources of input
2. Approaches to gathering input
3. Leadership of the process

**Figure 3: NCHL's Health Leadership Competency Model**

**Transformation**

- Achievement Orientation
- Analytical Thinking
- Community Orientation
- Financial Skills
- Information Seeking
- Innovative Thinking
- Strategic Orientation

**Execution**

- Accountability
- Change Leadership
- Collaboration
- Communication Skills
- Impact and Influence
- Information Technology Management
- Initiative
- Organizational Awareness
- Performance Measurement
- Process Management/Organizational Design
- Project Management

**People**

- Human Resources Management
- Interpersonal Understanding
- Professionalism
- Relationship Building
- Self Confidence
- Self Development
- Talent Development
- Team Leadership

Source: National Center for Healthcare Leadership, 2005.

**Figure 4: Five Sample Assessment Criteria**

- 1) Leadership (consider factors such as vision, strategic direction, executive acumen, decision-making, and board effectiveness).
- 2) Operations Management (consider factors such as financial performance, organizational effectiveness, outcomes, clinical utilization, patient satisfaction, service quality management).
- 3) People Management (consider factors such as management team, medical and professional staff, labor relations, volunteers, coaching, mentoring, staff morale and satisfaction, and communications).
- 4) Relationship Management (consider factors such as internal and external stakeholders, including: the hospital foundation, government and regulatory bodies, other hospitals, hospital associations, community organizations, media, special interest groups, local business, and business partners).
- 5) Hospital Development (consider factors such as new hospital development expansion plans).

Input could be collected from the following sources:

- Some or all board members.
- Members of senior management and medical staff officers.
- External representatives.

Certainly, the core group is the board; and a significant number of, if not all, directors should have the opportunity to participate. However, those outside the board actually observe much of what the CEO does. Therefore, a wise board would want to know what others (senior managers, external health community leaders) think about the CEO's performance.

**2. Approaches to Gathering Input**

Once a decision is made about who should provide input, the method of gathering information or input

4. Use of a board committee
5. Reporting to the board

**1. Sources of Input**

Part of clarifying the process involves deciding how broad to cast the net for input. The evaluation of a CEO's performance should not simply be based on one person's view. While the board is responsible for making judgments about the CEO's performance, input from beyond the board is needed.

needs to be designed. Collecting feedback on the performance of the CEO can be conducted in a number of ways, as outlined below:

- **Input to the Chair (not preferred)** — input is sometimes gathered individually by the chair, from all or a selected group of board members, either verbally or in writing. This is not a preferred method since it is too informal and does not ensure a sufficiently rigorous process or diversity of input.
- **Group Discussion** — input can be gathered by a committee of board members through a discussion process. The members would discuss and reach consensus about the CEO's performance on the identified criteria. A simple rating or assessment scale might be used:
  - Exceeds expectations (3)
  - Meets expectations (2)
  - Does not meet expectations (1)

Typically, the CEO would also rate himself or herself on the same criteria. The chair, or designate, would summarize these discussions as a basis for the committee discussion, and then for providing feedback to the CEO. The chair or committee representative(s) could then meet with the CEO to compare and discuss the ratings.

- **Board Appraisal Survey** — this approach is similar to the one above, except a structured survey instrument is used to canvass opinions on CEO performance. In this case, each respondent rates or scores the CEO's performance on each criterion, and may make comments explaining the rating. The chair or a third party then summarizes the responses. To ensure confidentiality, it is generally preferred to have this completed by a trusted, professional third party.
- **Multi-Rater Survey Instrument** — this is often referred to as a "360 review." In this approach, different perspectives of the CEO's performance come from a variety of sources. The board, senior management, medical leaders, and

external stakeholders are asked to provide input using a structured survey questionnaire.

- The hospital needs to design its own survey, based on the criteria (competencies and leadership skills) or use a third party survey, which may use slightly different criteria or competencies. Typical questionnaires ask respondents to rate how well the CEO fares against statements describing desired behavior or skills.
- An illustration of a section of such a survey is shown below in Figure 5. These surveys are typically proprietary. In this survey a five-point scale is used.
- Sources or groups providing input may include board members, members of the executive team, and of the Medical Executive Committee, as well as external representatives of organizations with significant involvement with the CEO.
- A third party typically distributes and prepares a summary report of the results for discussion between the chair and/or committee representative(s), and the CEO.

Each hospital will need to determine the process that best fits its organization. Certainly, there is a trend toward the more formal multi-rater approach as a best practice, since it promotes confidentiality, diverse inputs, and rigor.

### *3. The Chair Leads the Process*

The chair is in the best position to lead the process on behalf of the board, since the chair is generally responsible for managing the relationship with the CEO. The chair can maintain confidentiality and respect privacy.

Delegating to another member of the board should only be done under exceptional circumstances (ill health of the chair, for example).

In some situations, the board may have confidence in the chair to solely lead and conduct the process.

**Figure 5: Illustration of Multi-Rater Survey**

Leadership	5 Excels	4 Above	3 Meets Expectations	2 Below	1 Unacceptable	Don't Know
Thinks and acts strategically.						
Demonstrates the ability to effectively manage change.						
Excels at achieving support/commitment for decisions/actions.						
Provides vision and direction even when future is unknown.						
Creates enthusiasm and inspires others to achieve results.						
Challenges others to take actions that support the vision.						
Builds a strong sense of purpose among senior management team.						
Maintains optimism, encourages others to turn obstacles into opportunities.						
Leads by example.						

In this case, the chair still needs to solicit input from directors—all directors or those with most direct involvement with the CEO. That can be done through surveys or panel discussion.

Even when there is a committee involved, discussion of the evaluation feedback with the CEO may be best conducted by the chair alone.

#### 4. Use of a Board Committee

While the chair may lead the process, he or she may need some support to conduct it. A small board committee is the preferred approach to supporting

the chair in the process. There are a number of options concerning the composition of such a committee:

- Use an existing committee, such as the Executive Committee.
- Form a narrowly focused committee on management appraisal and compensation, possibly of officers or committee chairs.
- Establish an organization and human resources committee with a broader mandate including CEO evaluation as one of its responsibilities.

The assigned board committee may participate in any of the following ways:

- Serving as the panel providing input to the evaluation as discussed above.
- Providing input and advice to the chair on the overall results of a feedback process before discussions with the CEO.
- Meeting with the CEO to debrief and discuss the feedback from the process.
- Considering the implications of the evaluation for compensation and bonus, and making recommendations with respect to these matters, as authorized by the board.

## 5. Reporting to the Board

The chair should report to the board on the results of the process:

- The report should be presented and discussed in executive session.
- Directors should be reminded of their duty to respect the confidential nature of the evaluation.
- The report may indicate highlights of the evaluation and focus on the recommendations.
- The reporting process is not another opportunity for board members to provide input. This is why it is preferable for all board members to provide input earlier in the process.
- The key objective is to report to the board that the process is completed and advise them of any pertinent implications or recommendations.

## Frequently Asked Questions

### 1. *Should the full board be involved in the evaluation process?*

While the board, as a whole, must ensure that the CEO is being supervised appropriately, each member does not need to be involved in the details of the evaluation process. However, an effective process should include a provision for receiving input from all board members.

It is arguably a more effective process if only the chair or a few members of the board are directly involved in the dialogue with the CEO. This reflects the reality that an evaluation and feedback process is inherently personal, and needs to be handled with care.

At the same time, board members are free to make suggestions to the board chair or to the committee charged with the evaluation responsibility regarding the process and to ask questions concerning how that responsibility is discharged.

### 2. *Should the evaluation process be completed annually?*

Typically, hospitals and their CEOs will set annual goals and objectives. Therefore, it is sensible to review progress or performance annually.

On the other hand, some CEO evaluation processes are costly and time-consuming, especially if they involve third party surveys to be completed by board members and others. Therefore, it is reasonable to suggest that the board may conduct an intensive evaluation process every other year instead of annually. However, in the off-year, there still should be a less intensive process conducted by the chair or a board committee. Essentially, an annual, confidential discussion with the CEO regarding performance and areas for improvement should remain.

### 3. *What is the link between CEO compensation and evaluation?*

CEO compensation is also an important matter for board oversight. In establishing the employment contract with the CEO, the board will define the terms of compensation and potential incentive bonus.

Since compensation is sometimes disclosed publicly, there is a degree of transparency in these matters not found in other sectors. Nonetheless, the board needs to obtain information and advice to ensure compensation and incentive arrangements are in line with sector practice.

Once the compensation arrangements are set, there needs to be a clear link between the results of the

CEO evaluation and the decision about base and incentive compensation. For this reason, the process should be linked, and the same person or committee assigned the responsibility of conducting the evaluation should also make recommendations on compensation decisions.

In principle, there should be a strong link between achieving performance results and financial incentives. However, the board must take care not to overemphasize the achievement of short-term (annual) results to the detriment of the underlying strength and sustainability of the hospital. That is one factor in containing the size of bonus incentives relative to base compensation. For this reason, the criteria chosen must reflect additional longer-term factors, such as building people and organizational capacity, as well as external relationship management.

#### **4. *Should the evaluation process be assigned to one standing board committee?***

If a board committee assumes responsibility for the CEO evaluation, it may also oversee other aspects of supervising the CEO, including determining compensation and bonus arrangements, succession

planning, development plan, and selection, from time to time. The work of such a committee would normally be concentrated in a period of three to four months during the year. For this reason, it may be simpler for a board to assign this task to the Executive Committee or to appoint an *ad hoc* committee.

On the other hand, it is becoming common practice for boards in the private sector to establish separate committees for these roles, including an Executive Compensation Committee. The appointment of a standing committee to discharge this role is one way of ensuring that it gets adequate and serious attention from an appropriate collection of directors. Non-profit organizations should take care to conduct compensation reviews and decisions in compliance with applicable rules of the Internal Revenue Service to take advantage of the rebuttable presumption of reasonableness accorded such decisions.

#### **Sample Tools**

The following tools will help you apply the concepts in this chapter to your board's work. These tools are also available online at [www.americangovernance.com](http://www.americangovernance.com).

# Sample Chief Executive Officer Performance Appraisal Process and Assessment Form

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

## DESCRIPTION OF THE PROCESS

1. The Chairman of the Board initiates the CEO performance appraisal process by asking the CEO to complete a self-appraisal using these same performance appraisal materials. This will include a summary of achievements relative to the goals and objectives defined at the beginning of the year, and a self-appraisal based on the CEO's key accountabilities.
2. The Chairman then asks each Director (Committee member, if conducted by Committee of the Board) to appraise the CEO's performance using the performance appraisal materials. In conjunction with this, the Chairman distributes the following documents to each reviewer:
  - The CEO's completed self-appraisal.
  - A blank CEO performance appraisal form.
  - A report on senior manager's evaluation of the CEO's performance over the past year. (Applies to organization's engaging in 360 degree performance evaluation process)
  - The CEO's proposed goals for the coming year.
3. The Chairman collects the surveys from all reviewers, compiles responses, and averages scores and presents a summary to the Board (Committee) for approval.
4. Directors (Committee members) meet to decide what to emphasize in their feedback to the CEO (and on the final appraisal document). The Board (Committee) also reviews the CEO's proposed goals for the coming year, makes any modifications necessary, and approves them.
5. The Chairman incorporates modifications requested by the Board (Committee) and prepares final documentation of the appraisal.
6. The Chairman [and \_\_\_\_ other members of the Board] meets personally with the CEO to discuss the appraisal results. This session should ideally focus solely on providing feedback to the CEO. If salary increase and/or bonus are communicated in the same meeting, care should be taken to spend plenty of time providing feedback and not let compensation become the principal focus of the conversation

## Assessment of Key Accountabilities

Please evaluate the CEO's performance for each Key Accountability. Be as thorough as possible in describing the CEO's performance on each Key Accountability.

<b>Key Accountabilities</b> Description of Accountabilities	Please Circle the Applicable Performance Factor and Write in Your Comments				
	Meets minimal expectations	Meets some expectations	Meets expectations	Exceeds expectations	Don't Know or Not Applicable
<b>Financial Management</b>	1	2	3	4	N/A
<ul style="list-style-type: none"> <li>• Ensures that adequate financial controls are in place to protect the financial health of the organization.</li> <li>• Provides accurate and complete financial reports and plans to the Board for their review, revision, and approval.</li> <li>• Enhances revenue and controls costs to ensure achievement of planned operating margin.</li> </ul>	Comments:				
<b>Quality of Care and Service</b>	1	2	3	4	N/A
<ul style="list-style-type: none"> <li>• Ensures that the organization delivers clinical care that demonstrates continuous quality improvement and progress towards meeting the highest clinical standards for quality.</li> <li>• Ensures that the organization delivers customer service that meets the highest patient satisfaction and customer service standards.</li> <li>• Ensures that the organization takes all measures necessary to ensure the safety of patients.</li> </ul>	Comments:				
<b>Human Resources Management</b>	1	2	3	4	N/A
<ul style="list-style-type: none"> <li>• Provides leadership to ensure that the organization attracts, retains, motivates, and develops a highly-qualified workforce.</li> <li>• Selects and develops a cohesive executive team to successfully implement organization objectives.</li> <li>• Maintains a good work environment and high employee morale.</li> </ul>	Comments:				
<b>Leadership and Governance</b>	1	2	3	4	N/A
<ul style="list-style-type: none"> <li>• Demonstrates and articulates the vision and mission of the organization</li> <li>• Works with the Board to establish and maintain the highest ethical standards for the organization.</li> </ul>	Comments:				

## Assessment of Key Accountabilities *(continued)*

<b>Key Accountabilities</b> Description of Accountabilities	Please Circle the Applicable Performance Factor and Write in Your Comments				
	Meets minimal expectations	Meets some expectations	Meets expectations	Exceeds expectations	Don't Know or Not Applicable
<b>Operational Management</b>	1	2	3	4	N/A
<ul style="list-style-type: none"> <li>• Develops, communicates and leads the implementation of annual operating and financial plans.</li> <li>• Identifies obstacles and problems and takes corrective action to achieve plans and goals.</li> </ul>	Comments:				
<b>Strategic Planning</b>	1	2	3	4	N/A
<ul style="list-style-type: none"> <li>• Works with the Board to translate vision and mission into realistic strategic goals and objectives.</li> <li>• Develops, communicates and leads the implementation of the organization's strategic plan.</li> <li>• Ensures that the planning process is effective and that the organization's strategic direction is clear to all staff.</li> </ul>	Comments:				
<b>Performance Management</b>	1	2	3	4	N/A
<ul style="list-style-type: none"> <li>• Establishes and maintains a system for managing and monitoring performance.</li> <li>• Ensures that meaningful and challenging goals for performance improvement are established.</li> <li>• Holds managers accountable for achieving performance standards and goals.</li> </ul>	Comments:				
<b>Board Relations and Communications</b>	1	2	3	4	N/A
<ul style="list-style-type: none"> <li>• Develops and maintains effective working relationships with Board members.</li> <li>• Keeps Board fully informed of important developments and issues</li> <li>• Provides clear and timely information to the Board to inform and support their decisions.</li> </ul>	Comments:				
<b>Physician Relations</b>	1	2	3	4	N/A
<ul style="list-style-type: none"> <li>• Develops and maintains positive and effective relationships with physicians associated with the organization.</li> <li>• Encourages open communication with the physicians.</li> <li>• Develops and implements a medical staff development plan consistent with the organization's strategic plan and direction.</li> </ul>	Comments:				

## Assessment of Key Accountabilities *(continued)*

<b>Key Accountabilities</b> Description of Accountabilities	Please Circle the Applicable Performance Factor and Write in Your Comments				
	Meets minimal expectations	Meets some expectations	Meets expectations	Exceeds expectations	Don't Know or Not Applicable
<b>Community Relations and Communications</b>	1	2	3	4	N/A
<ul style="list-style-type: none"> <li>• Represents and promotes the interests and the image of the organization to government at all levels, to the local community, to accrediting bodies and to the public at large.</li> </ul>	Comments:				
<b>Fundraising</b>	1	2	3	4	N/A
<ul style="list-style-type: none"> <li>• Works with development staff and the Board to implement a fund-raising program that meets established goals.</li> <li>• Obtains commitments and establishes effective relationships with major prospective donors.</li> </ul>	Comments:				

## Assessment of Individual Goals and Objectives

Individual Goals and Objectives Description of Goals	Please Circle the Applicable Performance Factor and Write in Your Comments				
	Meets minimal expectations	Meets some expectations	Meets expectations	Exceeds expectations	Don't Know or Not Applicable
	1	2	3	4	N/A
<p><b>EXAMPLE: Key Results Area:</b> Initiate and develop an open heart program.</p> <p><b>Goals and Objectives:</b> Recruit and develop the clinician team. Complete building.</p> <p><b>Measurement Criteria:</b> Physicians on board and physical structure completed.</p> <p><b>Time Frame:</b> February, 2009.</p>	Comments:				
	1	2	3	4	N/A
<p><b>Key Results Area:</b></p> <p><b>Goals and Objectives:</b></p> <p><b>Measurement Criteria:</b></p> <p><b>Time Frame:</b></p>	Comments:				
	1	2	3	4	N/A
<p><b>Key Results Area:</b></p> <p><b>Goals and Objectives:</b></p> <p><b>Measurement Criteria:</b></p> <p><b>Time Frame:</b></p>	Comments:				
	1	2	3	4	N/A
<p><b>Key Results Area:</b></p> <p><b>Goals and Objectives:</b></p> <p><b>Measurement Criteria:</b></p> <p><b>Time Frame:</b></p>	Comments:				

## Summary Evaluation and Comments

Identify any achievements or contributions not already addressed above. Note any major accomplishments you believe should be recognized.

Describe any areas in which you believe the CEO's performance should be improved. Identify specific development goals for the coming year.

Record any additional comments about the CEO's performance. Also comment on any circumstances that may have influenced the CEO's performance during the year.

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Signature

# Sample Executive Compensation Policy

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

The Compensation Committee of the Board of Directors (the “Committee”) of \_\_\_\_\_ (“the Organization”) in accordance with this Executive Compensation Policy (the “Policy”) is responsible for preparing and approving the total compensation of the Organization’s senior executives (collectively, “Executives”) to ensure that compensation paid to such Executives is reasonable and does not result in excessive and inappropriate benefit to private individuals.

The Committee shall, on an annual basis, review and approve executive compensation pursuant to the procedures set forth below. This process is intended to result in compensation decisions that are consistent with the Organization’s fulfillment of its mission as set forth in the Organization’s Articles of Incorporation, as well as the Organization’s compensation philosophy and related principles set forth in this Policy.

## 1. COMPENSATION PHILOSOPHY.

- a. **Compensation Objectives.** This Policy is intended to result in the determination and payment of total compensation, including benefits, for Executives based on the following objectives:
  - Compensation that is objectively fair and reasonable compared to similar executives at similar institutions;
  - Compensation that contributes to the attraction and retention of qualified and talented individuals in Executive positions;
  - Compensation that rewards the attainment of performance goals and expectations; and
  - Compensation that reinforces the commitment to the Organization’s mission, purpose and values.
- b. **Analysis of Total Compensation.** In assessing the reasonableness of an Executive’s total compensation, the Committee shall take into account all components of compensation, including but not limited to, salary, any bonus or incentive payments, severance payments, and deferred and noncash compensation, as well as all compensatory benefits such as payments to medical, dental, life, annuity, retirement, severance pay and disability benefit plans, and any fringe benefits such as expense, housing, automobile, cellular phone, and computer allowances.

All components of each Executive’s total compensation shall be taken into account for comparability. In addition, each component shall be included as taxable income to the Executive, unless the component is specifically excluded from taxable income by the Internal Revenue Code.

- c. **Prohibition of Personal Loans to Executives.** The Board or Committee shall not make, arrange for, approve or recommend any personal loan by the Organization to any Executive, or any Executive compensation that provides for any such personal loan.

## 2. EXECUTIVE PERFORMANCE REVIEW.

- a. **Review of the CEO.** The Committee shall conduct an annual performance review of the CEO, the results of which shall be used in determining a reasonable total compensation for him or her.
- b. **Compensation Recommendations from CEO.** The Committee shall conduct an annual performance review of the remaining Executives. The Committee may, in its discretion, request that the CEO formulate a compensation recommendation for each Executive who reports to him or her. The CEO may present compensation recommendations based on an evaluation of each Executive's job performance in accordance with criteria established by him or her.

## 3. COLLECTION OF COMPARABILITY DATA.

- a. **Generally.** When reviewing or assessing the total compensation of any Executive pursuant to this Policy, the Committee shall obtain sufficient information, taking into consideration the knowledge and expertise of its members, to determine whether total compensation of each Executive is reasonable (i.e., whether such compensation is comparable to that of similar executives at similar institutions).
- b. **Independent Compensation Consultant.** To assist in the determination of reasonable compensation, the Committee may select and engage a qualified independent compensation consultant ("Consultant") to review and analyze the total compensation, including benefits, of each Executive. The terms of the Consultant's engagement shall provide that the Consultant is to report to the Committee, and that the Consultant shall have no reporting responsibilities to any Executive with respect to any engagement in connection with this Policy. **[The Committee shall engage a Consultant at least every \_\_\_ years to review and analyze the total compensation of the Executives.]**
- c. **Collection of Comparability Data By Consultant.** The Committee shall instruct the Consultant to compile appropriate comparability data, which may include compensation and benefits paid by similarly situated organizations for positions that are functionally comparable to those of each Executive, including positions with both private and governmental entities as well as both taxable or tax-exempt organizations. The Committee shall direct the Consultant to analyze a number of different variables in assessing comparability, including but not limited to organizational size, geographic location, the nature of the services provided, the level of experience and specific responsibilities of the position considered, and the components of the compensation offered.
- d. **Presentation by Consultant.** If a Consultant is retained, the Consultant should be directed to provide written analysis and recommendations with respect to a reasonable total compensation for each Executive. The Committee may additionally request that the Consultant be available to present a written analysis and recommendations and to take questions from Board or Committee members.
- e. **Other Information.** In addition to the reports and analyses of the Consultant, the Committee shall also consider additional comparability data, including but not limited to: the availability of similar services in the geographic area, current compensation surveys compiled by independent firms, and actual written offers from similar institutions competing for services of the applicable Executive.

#### 4. REVIEW AND RECOMMENDATION BY THE COMMITTEE.

- a. **Review of Data.** In determining reasonable compensation, the Committee members who do not have a conflict of interest with respect to the payment of compensation to each Executive shall review, consider and discuss the comparability data obtained with respect to such Executive, and shall take into account performance reviews of the Executive, any recommendation by the CEO for any Executive who reports to him or her, as well as the Executive's experience, specific responsibilities, and length of service.
- b. **Authority of the Committee.** The Committee shall determine and approve all components of a reasonable total compensation for the Executive.
- c. **Participation of Committee Members.** Only Committee members not having a conflict of interest with respect to the compensation arrangement at issue shall participate in decisions regarding the compensation of any Executive as provided in this Policy. A Committee member will be considered to have a conflict of interest to the extent such Committee member, or a member of his/her family, would (i) benefit economically from the proposed compensation to the Executive, (ii) is employed by and/or is subject to the direction and control of the Executive, or (iii) receives compensation subject to the approval of the Executive, or (iv) otherwise has a material financial interest affected by the payment of compensation to the Executive. Any Committee member who has a conflict of interest with respect to the payment of compensation to any Executive shall not be present for any discussion, and shall not vote or be present for any vote with respect to the compensation of such Executive.

#### 5. DOCUMENTATION OF COMMITTEE AND BOARD ACTIONS.

Deliberations, recommendations and decisions regarding compensation shall be documented adequately and contemporaneously in the written minutes of the Committee. Where applicable, such minutes shall include the following information:

- Terms of total compensation and the date of approval;
- The names of all Committee members present during any discussion of Executive compensation, and the vote of each member;
- Comparability data obtained and relied upon by the Committee and how those data were obtained;
- Actions taken by any Committee member who had a conflict of interest with respect to the compensation determination as described in this Policy (e.g., whether the conflicted director left the room and did not participate in the discussion or vote); and
- Specific reasons for any determination by the Committee that reasonable compensation for any Executive should: i) be above or below the base salary range, or ii) materially deviate with respect to compensation components that were recommended by the Consultant.

All records of minutes must be prepared before the later of the next meeting of the Committee or 60 days after any final action is taken by the Committee. Records must be reviewed and approved by the Committee as reasonable, accurate and complete within a reasonable period thereafter.

The foregoing Policy was adopted by the Board of Directors of the Organization on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

# The Board's Role in Enterprise Risk Management

One role of the board is to identify and ensure plans are in place to manage risk. Unlike some board responsibilities risk management cuts across virtually all aspects of board decision-making.

## Understanding Enterprise Risk Management

In order for a board to understand and perform its role with respect to risk, directors should understand a broader view of risk management. At one time, risk management primarily referred to insurance. Today, with greater uncertainty affecting health care organizations, a broader view of risk management is needed. That broader view is called enterprise risk management.

The board must understand two key elements of this broader concept of risk management:

- Nature and sources of enterprise risk
- Risk management strategies

## The Nature and Sources of Enterprise Risk

Risks are typically thought of as losses created by external or internal events or acts. Enterprise risk management, however, considers risk from a broader perspective, and focuses on risks that affect the entire organization, not just one aspect of operations. Enterprise risk management focuses on these three broad categories of loss:

1. Liabilities
2. Business viability
3. Mission and intangible risks

### 1. Operational Liabilities and Losses

A hospital has direct liability for its equipment, premises and facilities, patient safety and protection,

safe operation of hospital systems, processes and protocols, staff appointments, and monitoring staff competence.

A hospital also has vicarious liability for its employees.

Potential loss or liability generally arises in the following categories:

- Contractual obligations
- Statutory liability
- Negligence (or other torts)
- Regulatory compliance

### 2. Business Viability Risks

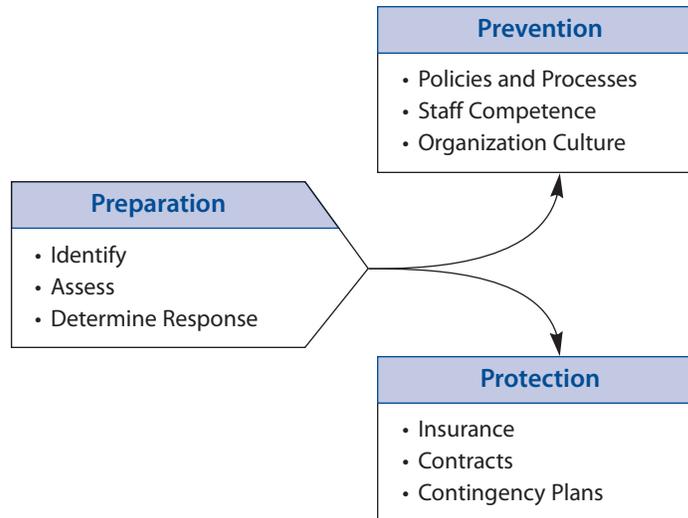
A fundamental business risk is sustainability, the ability of the hospital to fund its ongoing services and programs.

The risks to the sustainability or viability of the business are primarily financial and can be related to operational risks, as significant losses arising from liabilities may contribute to weakened viability.

Examples of major risks to sustainability include:

- Cash flow not sufficient to meet obligations.
- Lack of operating funds to provide for desired services.
- Budget assumptions not realized.
- Unexpected events having an impact on revenue or expenses.
- Lack of capital funds to maintain facilities or broaden services to patients, which could arise from a number of sources:
  - Lack of fundraising support from the foundation.

**Figure 1: Risk Management Strategies**



- Capital project overruns.
- Poor preventive maintenance or capital needs planning.

### 3. *Mission and Intangible Risks*

Mission risks are primarily about reputation, support in the community, and the ability to meet aspirations in terms of service to patients and community. This type of risk is the risk of lost opportunity, failing to achieve the hospital's vision or maximizing the delivery of the hospital's mission.

Clearly, the first two categories of risk can cause risks to the mission. However, mission and intangible risks may arise without financial loss.

Included in this type of risk would be loss of reputation.

Mission and intangible risks may arise from:

- Patient complaints or allegations regarding quality of care.
- Closure of services.

### **Risk Management Strategies**

Enterprise risk management involves a broader view of risk. One framework for thinking about this involves three interrelated components: preparation, prevention, and protection, as shown in Figure 1.

- **Preparation** involves identifying and assessing potential risks, as well as determining how to respond to each risk. Preparation includes the following:
  - Identification of risks — periodically, this means conducting a comprehensive risk identification process.
  - Assessment of risks — considering the likelihood and potential impact of risks, prioritizing risks and identifying ways to address or respond to each.
  - Implementing plans to respond to risks — that is, avoiding, accepting, reducing, or sharing a risk.
- **Prevention** includes ensuring the operating plan is achieved, as well as preventing failures in

**Figure 2: Risk Management, Management Oversight Areas**

- a) Risk Identification and Assessment
- b) Insurance
- c) Budget and Capital
- d) Internal Financial Controls
- e) Quality Management
- f) Contracts Policy
- g) Investment Policy
- h) Contingency Planning
- i) Organization Culture

executing the plan. Strategies for prevention of loss or risk include:

- Policies and processes that ensure risks are avoided, where possible, and performance is monitored so management can take corrective action.
- Ensuring competence of staff.
- Building an organizational culture that promotes achieving results, and identifying and addressing risks.
- **Protection** includes mitigating the effects of risks on the organization through various measures:
  - The traditional risk management strategy of insurance.
  - Establishing contractual protections against contingencies or risks.
  - Contingency planning to diminish the impacts of potential risks and surprise events. This includes emergency preparedness for disasters and infection outbreaks.

## Role of the Board with Respect to Risk

Enterprise risk management suggests that the board discharges its responsibility for protecting the corporation against risk by applying all three components of risk management. Accordingly, the board's role goes beyond insurance and involves preparation, prevention and achievement. Ultimately, the board must ensure appropriate steps are taken to prevent a financial or other loss to the corporation, ensure that the hospital achieves its mission and vision, and does so consistent with the organization's values.

The board does this in two ways: through its oversight role and through its own behavior.

### 1. Oversight of Management's Risk Management Program

The board must assure itself that management has put in place the appropriate policies, processes and programs to prepare, prevent, and protect the hospital from foreseeable and material risks. The board must monitor management's risk management efforts through regular reports and where possible, measurable assessments.

The board discharges its oversight of risk through the following (as shown in Figure 2):

- **Risk Identification and Assessment** — management should undertake a comprehensive risk identification and assessment process from time to time. As part of this process, management must consider contingencies and potential surprise events, and the level of preparedness of the hospital. Management must report the results of this process to the board at regular intervals.
- **Insurance** — insurance programs need to be adequate given the identified and assumed risks, and maintained at appropriate levels. The board needs assurance that this is maintained and regularly reviewed by management.
- **Budget and Capital** — financial plans, including operating and capital budgets, provide a basis for protecting against predictable risks to the

sustainability or viability of the hospital.

Planning processes include:

- Budget planning and monitoring.
- Internal productivity comparisons to benchmarks to ensure the hospital is not falling behind its peer group relative to its level of efficiency.
- Cash flow management to ensure operations are not jeopardized by lack of cash to meet short-term obligations.
- Ensuring the capital needed to maintain and replace buildings and facilities is available and used cost-effectively. This means ensuring adequate capital reserves and fundraising capacity to meet forecasted needs.
- **Internal Financial Controls** — sound internal financial controls need to be in place and functioning well. This includes effective protocols for approving expenditures, such as:
  - Check signing authority.
  - Authority for execution of contracts.
  - Monitoring compliance with contractual and check signing authority and controls.
  - Ensuring that staff is competent, licensed and has not been subject to exclusion from participation in federally funded programs.
  - Asking auditors where issues are identified (materiality issue).
  - Monitoring for regulatory compliance, including but not limited to Medicare and Medicaid regulations and exempt tax law and regulation.
- **Quality Management** — the board must monitor the quality of patient care. Management, in collaboration with the organized medical staff, must ensure that the policies, programs and processes are in place to assure quality services. These must be open to review by a board committee.
- **Contracts Policy** — there must be an effective policy framework for managing the procurement of goods and services, as well as the management of contracts. This framework includes:
  - Contract signing policy to ensure adequate level of approval and accountability based on amount.
  - Ensuring an adequate number of competitive suppliers for specified levels of contract value.
  - Contract review and retention policies.
  - Limited appointment of agents.
  - Due diligence on key relationships to ensure performance can be met.
  - Monitoring performance of service providers.
- **Investment Policy** — establish sound policies relative to the investment program, including:
  - Defining the nature of acceptable investments.
  - Ensuring adequate diversification.
  - Reviewing portfolios.
  - Monitoring investments for compliance.
- **Contingency Planning** — management must have contingency plans in place to respond to identified and unanticipated risks. These plans include:
  - Emergency recovery and response planning.
  - Infection control policies and programs.
- **Organization Culture** — while having appropriate policies and procedures in place is necessary, having an organizational culture that encourages and supports adherence to these policies is critical to an organization's success in identifying and managing risk. Senior management and the board typically lead the building of the organization's culture by implementing the following:
  - Establishing a risk management philosophy and values, including codes of conduct and protection for whistle blowing.

**Figure 3: Risk Management,  
The Board's Own Behavior**

- a) Knowledge and Abilities of Directors
- b) Quality Information and Advice
- c) Participating Effectively in Financial and Quality Oversight
- d) Being Prepared to Question and Act

- Staff training and education relating to enterprise risk management.
- Ensuring clear and open lines of communication about risk throughout the hospital.
- The board and senior management should also ensure risk management programs and activities are monitored and evaluated on an ongoing basis.

## 2. The Board's Own Behavior

Relying on the oversight of management is not sufficient. The board and its members need to take additional, reasonable steps, as outlined in Figure 3, to ensure the board's behavior and processes are consistent with the organization's enterprise risk management program. These steps would include the following:

- **Knowledge and Abilities of the Board and Board Committees** — As members of the board and its committees, directors must know their roles and responsibilities and have the skills to perform them. This includes:
  - Ensure programs and approaches are in place so that each director understands the nature of the board's role and the role of the committees involved in financial matters and risk.
  - Recruit members for the skills required on the board (continuity and turnover should

be balanced at the board level and on committees).

- Periodically review written committee mandates.
  - Require financial literacy of finance and audit committee members.
  - Provide directors with the independence to perform their duty, including being able to ask questions of the board and of committees. Directors should also keep themselves free from external influences and be provided with the opportunity to receive independent advice where needed.
- **Quality Information and Advice** — To discharge their responsibility for assessing risk, directors need quality information from many sources. The information flowing to the board must satisfy a number of requirements:
    - Show projections (forward-looking information).
    - Facilitate comparisons between planned results or budgets and actual results.
    - Facilitate comparison with reasonable benchmarks of comparable hospitals or organizations.
    - Show possible consequences of optional courses of action.

Management will provide much of the information received by the board in as much detail as appropriate to the matter under consideration. Supporting information should be available to any director requesting more detail. The board should have access to senior management and physician leadership when necessary to understand issues and discharge their responsibilities. The board should also receive external reports, as appropriate, to keep apprised of the trends in health care and health care administration. Board members also should have access to external advisors, where deemed necessary. This may include asking for professional opinions and receiving third party advice directly.

- **Effective Participation in Key Financial and Quality Oversight Processes** — Directors need to participate effectively in the processes established to plan and manage key aspects of the hospital in order to protect against risk. These include reviewing and approving budgets based on realistic assumptions and projections that also make adequate provision for contingencies. Monitoring budget performance includes:
  - receiving and reviewing quality and timely reports;
  - reviewing reports that show variances;
  - requesting explanations for variances if required.

Boards must also participate effectively in capital planning. As well as overseeing capital plans prepared by management, the board must be an active participant in the capital planning process.

- **Being Prepared to Question and Act** — Being skilled and participating is not enough to ensure that the hospital is free of risks. Board members, and the board as a whole, must question management and be prepared to act where the information provided indicates a significant risk to the interests of the hospital, specifically:
  - Questioning management regarding the reasonableness of assumptions underlying strategic, financial, and other plans and the potential risks to their execution.
  - Questioning the level of management preparedness for contingencies and surprise events.
  - Reacting quickly or directing management to respond in exceptional circumstances where events emerge that create risks for the hospital’s reputation, performance or viability.

## Frequently Asked Questions

### 1. *Should there be a separate Board Risk Management Committee?*

There is no requirement to have a distinct Enterprise Risk Management Committee. In fact, owing to the fact that risks tend to overlap with other areas, it may make sense for existing standing committees to address the pertinent aspects of risk within their other responsibilities.

Accordingly, many hospitals may take the following approach to assigning risk to standing committees:

- Quality Committee reviews quality assurance and management programs relative to patient safety, infection and contingencies.
- Finance Committee reviews need for insurance and financial risks, including adequacy of budget, efficiency relative to funding, sensitivity to revenue shortfalls, and adequacy of financial reporting and controls.
- Audit Committee reviews adequacy and implementation of risk management policies and programs.

### 2. *How does a board member ensure that the information received from management is valid?*

The board must use its common sense relative to the adequacy of the information it receives. Where there is some concern, the board must request that the information be reviewed, supplemented and explained by management.

# Board Composition and Recruitment

The board's role is to govern and oversee the affairs of the hospital.

In legal terms, the board is sometimes described as the “mind and will” of the organization. The composition, size, turnover, nomination, and recruitment processes are perhaps some of the most important governance elements and processes that contribute to effective governance.

## Board Size

### Legal Requirements

- State corporate law, and in some states there will be a statute specific to nonprofit corporations, will dictate the minimum number of directors. State corporation statutes generally will defer to the corporate bylaws, or the articles of incorporation, for such matters as the number of directors, how the number may be changed and the number of *ex-officio* directors. If the bylaws do not address any of these issues, then the composition of the board defaults to that state's corporation statute.

### Governance Principles

- The board needs to be large enough to ensure there are sufficient individuals to accomplish the board's workload.
- A board should not be so large as to impede effective discussion. All board members should have an opportunity for meaningful input.
- There has been a trend toward smaller boards in the nonprofit sector.
- Hospital boards tend to be larger, with a typical range being 11 to 15 members.

- A hospital board should determine its size with reference to the following factors:
  - *Ex-officio* positions for the CEO and medical staff Chief of Staff.
  - Board workload, which can be variable depending upon issues facing the hospital.
  - Skills required by the board, which may vary from time to time depending upon the issues and challenges facing the hospital.
  - Impact of board size on effective board discussions. All board members should have the opportunity for meaningful input without unduly lengthy board meetings.
  - Whether the board wishes to have rotating or staggered terms, and whether there should be limits on the number of terms a director is eligible to serve.

## Board Quality

### Legal Requirements and Expectations

- Directors cannot be convicted felons, been excluded from participation in the Medicare and Medicaid programs or been prohibited from serving on the board of a publicly traded company.
- Directors must fulfill the requirements and responsibilities of their position, for example, preparing for and attending board and committee meetings, upholding their fiduciary obligation to the hospital and working cooperatively and respectfully with other board members. Directors must comply with legislation governing the hospital, the hospital's by-laws and policies, and all other applicable rules.

## Governance Principles

The skills, experience and qualities of the individual directors are important elements in governance. There are three distinct attributes that should be considered in the nomination and election processes. Two of these attributes can be objectively measured (skill and experience) but the third (personal capabilities) is more subjective.

- **Skills** — Individual director skills refers to the area of expertise or knowledge that an individual director possesses. There are some skills that a board will always need. The Blue Ribbon Panel on Trustee Core Competencies, convened by the AHA’s Center for Healthcare Governance and the Health Research & Educational Trust, has recommended that all boards have at least some members with knowledge and skills in Health Care Delivery and Performance, Business and Finance and Human Resources. Other areas of knowledge and skills may be required as a result of an issue unique to a given hospital, such as a capital project, which may require construction/project management expertise.
- **Experience and Diversity** — Not every quality that is required or desired will come from a specialized skill. Experience in areas in which the board requires assistance or performs a governance role is also important. For example, experience in governance, health care or system integration is also important. There is also increasing emphasis on ensuring boards reflect the diversity of the community served, including demographic, cultural, linguistic, economic, geographic, gender, and ethnic characterization.
- **Personal Capabilities** — These are qualities that should be exhibited by all directors. The nature of a director’s fiduciary duties requires that, at a minimum, a director possess the following attributes:
  - Diligence
  - Loyalty
  - Honesty
  - Good faith

- Absence of apparent conflicts

The Blue Ribbon Panel recommends that hospital and health system boards seek the following personal capabilities in all board members:

- Accountability
- Achievement Orientation
- Change Leadership
- Collaboration
- Community Orientation
- Information Seeking
- Innovative Thinking
- Complexity Management
- Organizational Awareness
- Professionalism
- Relationship Building
- Strategic Orientation
- Talent Development
- Team Leadership

The report of the Blue Ribbon Panel, *Competency-Based Governance: A Foundation for Board and Organizational Effectiveness*, includes a tool for personal competency-based board member selection to help boards evaluate these competencies in candidates for board service.

## Term

### Legal Requirements

- Subject to limits imposed by state law, directors typically serve more than one term. Where directors serve more than one term, they should be elected to staggered terms to promote continuity of knowledge and expertise on the board. As discussed below, term limits are advisable however, to allow for the introduction of fresh thinking, expertise and perspective. Good governance practice would result in no more than one third of the board turning over at any time.

## Governance Principles

- Currently, consensus on good governance practice is that directors should serve for terms of at least two and preferably three years, with a maximum limit of three consecutive terms.
- In setting both the individual director term and the total length of service, a board is balancing the following factors:
  - **Acquiring Required Knowledge** — Hospital and health care environments are increasingly complex. Accordingly, there is a learning curve for a new director who must learn not only about the hospital itself and its governance structure, but also about the health care environment generally.
  - **Governance Expectations Have Increased** — Good directors will be in a continuous learning mode and will be better skilled board members with more experience.
  - **Availability of Mentors for New Board Members** — Experienced board members can provide a valuable mentoring role to new board members.
  - **Board Leadership Requirements** — It may take more than one initial three-year term in order to groom directors for board leadership positions such as the chair and vice chair.
  - **Balancing Continuity with Fresh Thinking** — A board needs to ensure there is appropriate continuity in the boardroom; however, without mandated turnover, there may be insufficient opportunities to recruit new board members.
  - **Available Resources** — The availability of potential new board members can vary between hospital communities and may facilitate a shorter term for some boards while requiring a longer term for others.

## Recruitment, Nomination and Election

### Legal Requirements

- Depending on a health care organization's by-laws, its board can be elected, appointed or self-perpetuating—meaning the board selects its own members. A hospital's by-laws may provide for *ex-officio* directors.

### Governance Principles

- A hospital's recruitment, nomination and selection process should take into account the following fundamental governance principles:
  1. Effective board member selection starts with a clear understanding of both board and individual board member roles and responsibilities.
  2. Board member selection should reflect the knowledge, skills and personal capabilities needed for the board to help a health care organization effectively achieve its mission and goals.
  3. The board is responsible for the quality of its own governance.
- There are a range of current practices with respect to the recruitment, nomination and selection of directors. Examples of some current practices include:
  - The public elects board members, as is the case in some county, district or public hospitals.
  - Board members are appointed by another entity, such as a parent board of a health care system; a sponsoring organization, such as in religious-sponsored systems; or a governmental authority, such as a county board of commissioners or a city council.
  - A board-appointed Nominating Committee recommends to the board a number of nominees who are then elected or approved by the board.

Given the increased emphasis on the importance of board member skills and personal capabilities, the board's recruitment processes should ensure that only those candidates identified through the board's approved selection processes become board members.

Best practices in board recruitment, nomination and selection should include the following, where appropriate:

- Ensuring that the board understands that it is responsible for board succession and establishes or designates a committee (for example, Governance or Nominating) to oversee the process on behalf of the board.
- Establishing eligibility criteria and developing a skills/experience/personal capabilities/diversity matrix with reference to board needs and diversity of the community served over a three- to five-year time horizon.
- Maintaining an up-to-date inventory of current board members' skills, experience and personal capabilities.
- Surveying current board members about their intentions with respect to length of service.
- Considering board and individual director evaluation results in determining required resources (skills, experience, capabilities) and available resources. Individual director renewal should not be automatic.
- Establishing a board committee charged with recruitment and selection. The board directs the committee to recruit consistent with board-approved requirements and eligibility criteria.
- Determining an appropriate recruitment strategy and considering a variety of means to identify board candidates, including local newspaper advertisements, contacting organizations, such as the Center for Healthcare Governance, that maintain rosters of volunteer directors, effective use of the hospital's Web site or the services of a recruitment firm.
- Requiring all prospective candidates to complete an application form.

- Interviewing short-listed candidates.
- Ensuring candidates are aware of what is expected of a director.
- Ensuring that only candidates nominated by a committee of the board charged with qualifying the nominee shall be elected to service.

## Frequently Asked Questions

### 1. What is the meaning of "ex-officio?"

*Ex-officio* simply refers to the means by which an individual takes an office. *Ex-officio* membership includes some or all of the rights, duties and obligations of the office. An *ex-officio* director has the same duties, rights and obligations as any other director, subject to any contrary provisions in the by-laws. Some corporations do not give *ex-officio* directors a vote. Examples of *ex-officio* directors include the CEO and hospital medical staff Chief of Staff.

### 2. Can a board provide for a minimum and maximum number of directors?

A hospital corporation is subject to the corporation law of the state in which it is incorporated and typically, state law requires that the board consist of a fixed number of directors, not fewer than three. There is no maximum number of directors. Because the size of the board is fixed in the by-laws, each time the board size changes, an amendment of the by-laws is required and the number of votes needed to approve an amendment will be set forth in the by-laws.

### 3. Is there a difference in the role of a trustee, a governor or a director?

Some hospitals use the term "trustee" to describe the individuals who serve in the capacity of directors of the corporation. Describing the members of the governing body as trustees, as opposed to directors, does not change the duties, rights or obligations of the individuals who comprise the board.

Directors of charitable corporations (such as a hospital organized as a nonprofit corporation) are

held to a different standard than directors of other corporations because they are trustees of charitable assets.

#### 4. *Can directors vote by sending substitutes to board meetings if they are not able to attend?*

The obligations of a director are individual to that director and cannot be the subject of delegation to another individual.

#### 5. *Can employees of the corporation be directors?*

There is no prohibition on who may serve as a director of a hospital corporation, as long as the by-laws so provide for employees to serve as directors and that care is taken to avoid conflicts of interest and the appearance of conflict of interest.

#### 6. *What is the minimum time commitment that is expected of a director?*

Directors are expected to attend all board meetings. Many hospitals have either formally or informally adopted a practice of asking directors to resign if they fail to attend a minimum number of board and committee meetings, without a leave of absence having been granted by the board or by the chair. The usual requirement is for a director to attend at least 75 percent of board meetings.

#### 7. *Is it inconsistent to provide that only candidates recommended by the board are eligible for selection?*

It is appropriate for self-perpetuating boards to elect only those candidates that have been reviewed and recommended by a nominating committee of the board. Election to the board of public hospitals, hospitals that are part of systems or those that are religious-sponsored hospitals may have different procedures. For a self-perpetuating board, one of its core governance roles is to be responsible for the board's own governance. This includes the composition of the board and succession planning. Provided that the board has adopted good governance practices with respect to identifying board needs, objectively and openly recruited and evaluated candidates, then the requirement that only candidates approved by the board be eligible for selection is consistent with good governance practices.

#### 8. *How many ex-officio members should be on a board?*

Some governance experts recommend a maximum of two *ex-officio* board members; typically the CEO and medical staff Chief of Staff, to help ensure that insider perspectives or interests do not dominate the board.

There are advantages and disadvantages to providing *ex-officio* positions to entities or organizations with whom the hospital feels connected. Certainly board representation is one way in which a strong link can be maintained with key partners. It will not, however, substitute for other actions that must be taken to ensure, for example, the hospital and those entities stay aligned. In addition, when there are significant numbers of *ex-officio* positions on the board, the number of positions for at-large directors will be impacted, or the board potentially will become too large to be manageable and effective.

It is important that a board be comprised of individuals with the skills, experience, personal capabilities and diversity appropriate for the hospital's mission, objectives and strategic issues and that the board evaluate the number of its *ex-officio* directors from time to time. It is also important for a board to question why it has these *ex-officio* positions and consider whether other actions might be more appropriate to maintain strong relationships.

*Ex-officio* directors are subject to the same duties, responsibilities and liabilities as any other director and therefore should be subject to the same mandatory orientation and education, and are asked to disclose potential or real conflicts of interest in the same way as other directors.

#### 9. *Where a hospital has multi-sites or covers a large geographic region, should the directors be representative of the geographical area served?*

There is no legal requirement, but it is important that issues unique to communities served by the hospital be reflected in board discussions. One way to do this is to include individuals who understand the unique needs of specific regions on the board,

however, geographic representation should not substitute for skills, experience and capabilities that are also required.

### **Sample Tools**

The following tools will help you apply the concepts in this chapter to your board's work. These tools are also available online at [www.americangovernance.com](http://www.americangovernance.com).

# Sample Guidelines For Director Selection

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

## **Purpose**

Effective governance depends on the right mixture of skills, experience, personal qualities and diversity among the members of the hospital board.

## **Policy**

Through the nomination and election process, the board will select directors according to their skill, experience, and personal qualities.

The board will seek a balance within the board concerning the skills and experience of directors, while considering any unique or special requirements of the hospital at the current time.

The board will ensure all directors possess the personal qualities necessary to perform their role as board members. The board will reflect the diversity of the community served.

The skills, experience, and personal qualities that the board will use to select potential directors are set out below.

## **Skills and Experience**

The board will reflect a complementary mixture of knowledge, skills and experience. The skills and experience the board will consider in selecting members include, but are not limited to, the following:

- Business management
- Human resources management
- Health care administration and policy
- Health system needs, issues and trends
- Clinical experience
- Government and government relations
- Political acumen
- Construction and project management
- Legal expertise
- Strategic planning
- Risk management
- Information technology
- Accounting
- Financial expertise

- Leadership
- Education
- Knowledge and experience in research
- Quality and performance management
- Patient safety
- Labor relations
- Board and governance expertise
- Public affairs and communications
- Ethics
- Diversity Issues
- Patient and health care advocacy
- Community Relations

### **Personal Qualities**

The board requires all of its members to possess the following personal qualities:

- An understanding of and commitment to the vision, mission, and core values of the hospital
- Honesty and integrity
- An understanding of governance
- An understanding of a director's role and fiduciary duties, and the role of the board
- An ability to think strategically
- An ability to work as part of a team
- An ability to communicate effectively
- Financial literacy appropriate for health care
- A willingness to devote the time and effort required to be an effective board member including attendance at board orientation, board retreats, board meetings, committee meetings, and hospital events
- An absence of potential conflicts and ability to recognize and manage potential conflicts of interest

### **Amendment**

This policy may be amended by the board.

### **Approval Date:**

### **Last Review Date:**

# Sample Application for Membership

## Board of Directors/Board Committees

Note: the following is intended to be an example that boards should adapt to meet their individual needs.

### 1. Instructions

- (a) To apply to be a member of the [name of hospital] Board of Directors, you must complete this form and submit it with a copy of your current resume or a brief biographical sketch.
- (b) Please submit your completed form and resume or biographical sketch by mail, fax, or e-mail [if the hospital is accepting applications on-line] to the following address: *[Hospital address with fax number and e-mail address]*
- (c) The deadline for applications is *[date of deadline]*
- (d) For more information about the application process, please contact: *[Name and contact information]*

### 2. Applicant Contact Information

Last Name:	First Name:
Home Address:	
City:	State:                      Zip Code:
Home Phone Number:	Business Phone Number:
E-mail Address:	
Preferred Method of Contact: Home Phone Business Phone E-mail	

### 3. Eligibility Criteria and Conditions of Appointment

- (a) Directors must be at least 18 years old.
- (b) Directors cannot be convicted felons, been excluded from participation in the Medicare and Medicaid programs, or been prohibited from serving on the board of a publicly-traded company (e.g., because of SEC or Sarbanes-Oxley violations).
- (c) Include any additional eligibility requirements unique to the hospital, for example, residence within a certain municipality
- (d) A director is expected to commit the time required to perform board and committee duties. The time commitment is likely to be a minimum of \_\_\_\_\_ hours per month.
- (e) Directors must fulfill the requirements and responsibilities of their position, for example, preparing for and attending board and committee meetings, upholding their fiduciary obligation to the hospital, and working co-operatively and respectfully with other board members. Directors must comply with legislation governing the hospital, the hospital's by-laws and policies, and all other applicable rules.

- (f) Directors must sign the declaration that appears below confirming their agreement to adhere to their fiduciary duties and board and hospital policies.

*[Optional: Please refer to (provide name of relevant document) for further details concerning the roles and responsibilities of directors.]*

#### **4. Conflict of Interest Disclosure Statement**

Directors must avoid conflicts between their self-interest and their duty to the hospital. In the space below, please identify any relationship with any organization that may create a conflict of interest, or the appearance of a conflict of interest, by virtue of being appointed to the board.

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#### **5. Knowledge, Skills, and Experience**

The board seeks a complementary balance of knowledge, skills, and experience. Please indicate your areas of knowledge, skills, and experience by completing Schedule A to this application.

#### **6. Declaration**

By submitting this application, I declare the following:

- (a) I meet the eligibility criteria and accept the conditions of appointment set out above;
- (b) I certify that the information in this application and in my resume or biographical sketch is true.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# Application for Membership: Schedule A

## Knowledge, Skills, and Experience

Please indicate your areas of knowledge, skills, and experience by checking off the relevant boxes and providing any relevant comments in the table below. It is not expected that you possess knowledge, skill or experience in all the areas set out in the table. Please indicate only those areas that apply to you.

<b>Finance</b>	
Basic	Advanced
Comments:	
<b>Business Management</b>	
Basic	Advanced
Comments:	
<b>Human Resources Management</b>	
Basic	Advanced
Comments:	
<b>Health care administration and policy and health system needs, issues, and trends</b>	
Basic	Advanced
Comments:	
<b>Clinical</b>	
Basic	Advanced
Comments:	
<b>Government and Government Relations</b>	
Basic	Advanced
Comments:	
<b>Political Acumen</b>	
Basic	Advanced
Comments:	
<b>Construction and Project Management</b>	
Basic	Advanced
Comments:	

<b>Risk Management</b>	
Basic	Advanced
Comments:	
<b>Information Technology</b>	
Basic	Advanced
Comments:	
<b>Accounting</b>	
Basic	Advanced
Comments:	
<b>Education</b>	
Basic	Advanced
Comments:	
<b>Research</b>	
Basic	Advanced
Comments:	
<b>Quality, Patient Safety and Performance Management</b>	
Basic	Advanced
Comments:	
<b>Labor Relations</b>	
Basic	Advanced
Comments:	
<b>Board and Governance</b>	
Basic	Advanced
Comments:	

<b>Legal</b>	
Basic	Advanced
<i>Comments:</i>	
<b>Strategic Planning</b>	
Basic	Advanced
<i>Comments:</i>	
<b>Patient and Health Care Advocacy</b>	
Basic	Advanced
<i>Comments:</i>	
<b>Community Relations/Connections</b>	
Basic	Advanced
<i>Comments:</i>	

<b>Public Affairs and Communications</b>	
Basic	Advanced
<i>Comments:</i>	
<b>Ethics</b>	
Basic	Advanced
<i>Comments:</i>	
<b>Diversity</b>	
Basic	Advanced
<i>Comments:</i>	
<b>Leadership</b>	
Basic	Advanced
<i>Comments:</i>	

# Sample Director Recruitment and Selection Process

## From a Community Multi-Site Hospital with a Diverse Community

*Note: the following is intended to be an example that boards should adapt to meet their individual needs.*

<b>Needs Identification</b>		
<b>Task (February/March)</b>	<b>Methods</b>	<b>Responsibility</b>
1. Identification of number of new/replacement board members required	Response to resignations/review of current board profile and board evaluations – consider if incumbent should be renewed based on performance and selection criteria	Nominating Committee
2. Identification of selection criteria (i.e., skill, knowledge, experience, demographics)	Review of current board profile in context of selection criteria	Nominating Committee Subject to board approval
<b>Recruitment Process</b>		
<b>Task (March, April)</b>	<b>Methods</b>	<b>Responsibility</b>
3. Gathering names of potential candidates	Advertisements: • Print media • Community newspapers • Hospital website	Board/Nominating Committee
	Nominations	
	• Board Members	Board members
	• Medical Executive Committee	Chief of Staff
	• Board Committee Chairs	Board members
4. Initial contact with candidates	Provide information package to potential candidates (application form and duties and expectations of directors)	Board Secretary
<b>Selection Process</b>		
<b>Task (April)</b>	<b>Methods</b>	<b>Responsibility</b>
5. Short list, if required	Review CV and application	Nominating Committee
6. Interview candidates	Review relevant material, by-laws, director responsibilities, etc.	Board Chair/Nominating Committee
7. Reference follow-up	Telephone calls	Board Chair/Nominating Committee
<b>Approval Process</b>		
<b>Task (May/June)</b>	<b>Methods</b>	<b>Responsibility</b>
8. Approval by Nominating Committee and Governance Committee	Review CV/application, etc. Interview results and references. Match candidates to board needs.	Nominating Committee/Governance Committee
9. Approval by Board of Directors (May Board meeting)	Report of Nominating Committee request for approval by board	Board of Directors



# Officers

The board's officers are the board's leaders. While a board should have a chair, vice-chair and secretary, the necessity of other board officers will be mandated by the corporation's by-laws in compliance with state law. In considering governance processes that contribute to effective board leadership, a board should examine its process for identifying required board officers, recruitment and selection processes, terms of office and succession planning. It is also vitally important that the members of the board understand and support the very important role played by the board chair.

## Legal Requirements

There will be some variations from state to state, but in general:

- A hospital board is required to have a chair or president and a secretary.
- The chair or president must be a director.
- State law and/or the by-laws will establish the various officers of the board and their functions and responsibilities.

## Governance Principles

- There should be a separation between the role of the CEO and the role of the chair of the board.
- The board generally looks to the office of the chief executive to perform the secretarial function for the board.
- Where a board member is identified as secretary, a recording secretary should be designated. The role of a recording secretary can be formalized in the by-laws or provided by giving the secretary the right to delegate to a recording

secretary. The board chair may need, from time to time, to be able to deal directly with someone other than the chief executive with respect to calling meetings and other board requirements.

- The by-laws should provide for the election of a board chair, who must be a director, and for the appointment of a secretary and such other officers as the board may determine. This allows the board to determine appropriate officers and their duties from time to time without by-law amendment.
- The by-laws do not need to specify in detail the duties of any board officer. The board, through the adoption of a position statement, can establish officers' duties. This allows the board to amend or modify the role of its officers without requiring by-law amendment.
- There is no requirement prohibiting an individual from holding more than one officer's position. For example, many corporations combine the office of secretary and treasurer.
- The by-laws may establish the office of vice chair or chair-elect, whose duties should include acting in the absence of the chair and such other duties as the board may assign from time to time.

## Board Chair

- The board should adopt a description of the role of the board chair and the qualities required of the board chair.
- The board should have a well-defined process for selection of the board chair.
- The board should determine the term of office of the board chair and the potential for any renewal terms. Common practice is to have an

initial term with eligibility for election for a fixed number of subsequent terms.

- Although it is difficult to not re-elect an incumbent chair, re-election should not be automatic.
- The board chair is the leader of the board and the presiding officer at board meetings.

The role of the board chair includes:

- Presiding at meetings of the board.
- Ensuring that meetings have been conducted in accordance with applicable legislation, the by-laws of the hospital, and the hospital's governance policies.
- Preserving order at board meetings.
- Allowing both sides of a discussion to be heard.
- Ensuring the sense of an issue is ascertained before a matter is brought to a vote.
- Exercising the chair's powers for a proper purpose.
- Fulfilling the fiduciary duties of a director.
- Ensuring relevant information is made available to the board.
- Ensuring that the board operates effectively – the chair ultimately oversees the quality of the board's governance processes.
- On an operational level, the chair:
  - Contributes to and approves the agenda
  - Ensures appropriate time is allotted to agenda items
  - Reviews draft minutes
  - Signs certain agreements pursuant to specific provisions in the by-laws
  - Calls meetings
  - Rules on procedural matters during meetings
  - Serves as the chair of the Executive Committee and the Executive Performance and Compensation Committee, as appropriate

- Serves as an *ex-officio* member of all board committees
- Serves as a counselor and advisor to the CEO
- Serves as a mentor to other board members
- Represents the board within the hospital
- Represents the hospital in the community and in dealing with regulatory authorities

## Role of the Chair

The board chair's role can be considered under three headings: role in relation to the board, role within the hospital, and the external role in relation to the community, as described in Figure 1 on page 106.

## Qualities Required of the Board Chair

The chair is the board leader and accordingly, not only needs to possess all of the qualities required in a director, but must also possess qualities to perform a leadership role. The board chair needs to have the ability to not only effectively manage board meetings, but also to develop and maintain relationships with directors, committee chairs, management and stakeholder groups.

The board chair's leadership qualities include the following:

- The ability to influence behavior—often an individual's ability to influence is acquired by having been an outstanding member of the board.
- Having in-depth knowledge of the health care industry, local markets, the organization and the governance process.
- The ability to recognize when compromises are required and to bring parties who are in dispute to an effective resolution in a way that will further board business in the best interest of the hospital and community.
- The ability to inspire other board members to contribute their skills and talents to the board.
- The ability to enforce board policies—the board chair must be prepared to discipline board members who do not adhere to the rules of fiduciary conduct.

**Figure 1: Role of the Board Chair**

Board	Hospital	Community
Responsible for board’s governance — oversee evaluation processes	Represent the board within the hospital	Public spokesperson for the board
Call meetings	Work effectively with and provide counsel to the CEO	Communicates to the public
Set agendas	Sign agreements	Relationships with partners
Chair meetings — ensure meetings follow proper process	Interact with other officers	Representative to government
Sign minutes	Chief of Staff relationship	Representative to the community

- The ability to deal with directors in a dignified and respectful manner, while at the same time ensuring that the bar on board behavior is set at a high standard and those who do not meet that standard are provided with an opportunity to improve.
- Having a respectful and collegial working relationship with the CEO and Chief of Staff, while at the same time maintaining the accountability relationship between those individuals.
- Being a visionary — looking forward, on behalf of the hospital, to the future and inspiring the board to a future vision for the organization.

**2. *Is the chair subject to a higher standard of care than the other members of the board?***

All directors and board officers are subject to the same standard of care. The chair, however, has an expanded scope of duties and must apply the standard of care to the performance of those duties.

**3. *What are the usual and customary roles of board officers?***

Assuming the board designates a chair, vice chair and secretary, the role of the vice chair is to perform the duties of the chair in the absence of the chair. A vice chair position, sometimes referred to as the chair-elect, can also be useful for grooming a future board chair.

While the immediate past chair should be available to the current chair as a resource, some organizations provide no formal role for that officer while other organizations’ by-laws make the past chair a full member of the board and often a member of the board Executive Committee.

**Frequently Asked Questions**

**1. *Does the board chair have a vote?***

The general rule is that the board chair, as a director, has the right to vote on any matter coming before the board. If the by-laws are silent on this issue, the chair votes in the same way as any other director.

Depending on state law, there may be a statutory obligation to appoint certain officers. Non-board members better fill many offices, such as secretary or treasurer. Other organizations may assign, through their by-laws, more than one office to an individual director.

#### 4. *Is the chair required to be an ex-officio member of all board committees?*

There is no requirement for the chair to be an *ex-officio* member of all board committees and, while participation of the chair in committees may be common and good practice, it may be too burdensome for some boards. Some boards will have both the chair and vice chair (especially if the vice chair is the chair-elect) as *ex-officio* members of committees.

#### 5. *How does the board recruit its chair and what processes are available for a board to deal with an underperforming chair?*

The first step in recruiting a chair is developing a position description for the chair and defining the qualities required in the board chair. Not every member of the board will have the leadership qualities that are required of the board chair. However, in recruiting to board positions, some emphasis should be placed on the ability to develop leadership potential, not only for the position of chair, but also for the positions of committee chairs. Those directors who appear to have the qualities required to be an effective chair should be provided the opportunity to demonstrate their abilities by being assigned the role of committee chair and eventually, vice chair.

There should be a defined selection process for the position of chair, including involvement of the

Nominating Committee or in some cases the Executive Committee (without the participation of the current chair). Board evaluations or individual director assessments sometimes allow a director to indicate his or her willingness to assume a board leadership position. An additional step in the process would involve asking every board member to identify individuals that could be effective board leaders. When a consensus emerges on a short list of potential candidates, those individuals should be interviewed to determine not only their willingness to take on the role, but their ability to commit the time required. The selection of the board chair is a decision for the board as a whole and the recommendation needs to be brought to the board (with potential candidates absent) for approval.

The best method to address an underperforming chair is to minimize the risk that the individual will not live up to expectations through developing an appropriate and comprehensive position description and following a rigorous recruitment process. In the event that, despite all best efforts, the individual who takes on the office of board chair is not suitable to the task, it is helpful if the board has a culture where re-election is not automatic. A helpful approach to deal with underperformance is to limit the board chair's term to one year renewable for an additional one year or for two years renewable for an additional two years. This allows the individual room to improve performance, or the opportunity for a graceful and dignified exit from the position at the expiration of the term, rather than mid-term.

### **Sample Tools**

The following tools will help you apply the concepts in this chapter to your board's work. These tools are also available online at [www.americangovernance.com](http://www.americangovernance.com).

# Sample Board Chair Role Description

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

## **Role of the Chair**

The board chair is the leader of the board. The board chair is responsible for:

- Ensuring the integrity and effectiveness of the board's governance role and processes.
- Presiding at meetings of the board, the board's Executive Committee, if the board has one, and the board's Executive Performance and Compensation Committee
- Representing the board within the hospital and the hospital in the community.
- Maintaining effective relationships with board members, management and stakeholders.

## **Responsibilities**

### **Board Governance**

The board chair ensures the board meets its obligations and fulfills its governance responsibilities. The board chair oversees the quality of the board's governance processes including:

- Ensuring that the board performs a governance role that respects and understands the role of management.
- Ensuring that the board adopts an annual workplan and objectives that are consistent with the hospital's strategic directions, mission and vision.
- Ensuring that the work of the board committees is aligned with the board's role and annual work plan and that the board respects and understands the role of board committees and does not redo committee work at the board level.
- Ensuring board succession by ensuring there are processes in place to recruit, select and train directors with the skills, experience, background and personal qualities required for effective board governance.
- Ensuring that the board and individual directors have access to appropriate education.
- Overseeing the board's evaluation processes and providing constructive feedback to individual committee chairs and board members as required.
- Ensuring that the board's governance structures and processes are reviewed, evaluated, and revised from time to time.

### **Presiding Officer**

The chair is the presiding officer at board meetings and meetings of the committees specified above. As the presiding officer, the chair is responsible for:

- Setting agendas and ensuring matters are dealt with to appropriately reflect the board's role and annual work plan. The board chair consults with the CEO and where possible develops the agenda at least 10 days prior to a meeting.

- Ensuring that meetings are conducted according to applicable legislation, hospital by-laws, and the hospital's governance policies.
- Facilitating the business of the board, including preserving order at meetings.
- Encouraging input and ensuring that both sides of a debate or discussion are heard.
- Encouraging all directors to participate and controlling dominant members.
- Facilitating decision-making.
- Ensuring relevant information is made available in a timely manner and that external advisors are available to assist as required.
- Ruling on procedural matters during meetings.

## **Representation**

- The chair is the official spokesperson for the board.
- The chair represents the hospital in the community and to its various stakeholders.
- The chair represents the board within the hospital, attending and participating in events as required.
- The chair represents the board in dealings with government and regulatory authorities.

## **Relationships**

The board chair facilitates relationships with, and communication among, board members and between board members and senior management.

The chair establishes a relationship with individual directors, meeting with each director at least once a year to ensure that each director contributes his/her special skill and expertise effectively.

The chair provides assistance and advice to committee chairs to ensure committee chairs understand board expectations and have the resources that are required for performance of their work.

The chair maintains a constructive working relationship with the CEO, providing advice and counsel as required.

- The chair works with the CEO to ensure he or she understands board expectations.
- The chair ensures that CEO annual performance objectives are established and an annual evaluation of the CEO is performed.

## **Other Duties**

- The chair performs such other duties as the board determines from time to time.

## **Skills and Qualifications**

The board chair will possess the following personal qualities, skills, and experience:

- All of the personal qualifications required of a board member
- Proven leadership skills
- Good strategic and facilitation skills, ability to influence and achieve consensus

- Ability to act impartially and without bias
- Tact and diplomacy
- Ability to communicate effectively
- Political acuity
- The time to build strong relationships between the hospital and stakeholders
- A trusted advisor relationship with CEO and other board members
- Served at least three years as a member of this board
- Outstanding record of achievement in one or several areas of skills and experience used to select board members

### **Term**

The board chair will serve an initial term of two years, renewable for an additional term at the discretion of the board.

### **Amendment**

This role description may be amended by the board.

### **Approval Date:**

### **Last Review Date:**

# Sample Board Chair Selection Process Guideline

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

## **Purpose**

It is in the interests of the hospital that there be succession planning and a smooth transition in the office of the chair.

## **Policy**

The incoming chair shall:

- Be a current member of the board;
- Be approved by the board one year prior to the conclusion of the current board chair's term; and,
- Serve as a vice chair until the commencement of his or her own term as chair.

## **Process**

The Governance or Nominating Committee is mandated to conduct the board chair selection process and to recommend to the board, for its approval, a nominee for incoming chair.

## **Selection Criteria - Desirable Attributes**

- Proven leadership skills
- Good strategic and facilitation skills; ability to influence and foster decision-making
- Ability to act impartially and without bias
- Tact and diplomacy
- Ability to communicate effectively
- Political acuity
- The time to build strong relationships between the hospital and stakeholders
- Ability to establish a trusted advisor relationship with the CEO and other board members
- Governance and board-level experience in the health care sector
- Outstanding record of achievement in one or several areas of skills and experience used to select board members

## **Selection Process**

- The Governance or Nominating Committee will canvas each board member to obtain views on the selection criteria and on the perceived strengths and weaknesses of possible candidates.
- The results of director evaluations and peer reviews shall be considered.

- The chair of the Governance or Nominating Committee will meet with each nominated candidate to ascertain interest. If the chair of the Governance or Nominating Committee is a potential nominee, he or she shall not participate in the selection process, and the process shall be conducted by the vice chair or another member of the committee.
- The Governance or Nominating Committee will canvas senior leadership at the hospital and the foundation to obtain input.
- The Governance or Nominating Committee will discuss findings and ultimately agree on a nominee to recommend.

### **Amendment**

This Chair Selection Process Guideline may be amended by the board.

### **Approval Date:**

### **Last Review Date:**

# Board Orientation, Education and Evaluation

Directors have a duty to be knowledgeable about not only the affairs of the hospital, but also about the board's governance processes and their rights, duties and obligations as members of the board. Directors should be made aware of what will be expected of them before they agree to become a member of the board. In addition, it is important that boards conduct mandatory orientation sessions and provide directors with access to ongoing and continuous education.

Governance is a board responsibility. As part of the board's ongoing responsibility for its own governance, a board should consider and implement governance evaluation processes that can contribute to the continuous improvement of board governance.

## Board Orientation

### *Governance Principles*

It is the responsibility of the board to ensure that new directors and new committee members receive orientation to their role as members of the board and/or a member of a committee. Prospective board members should be advised that orientation is mandatory.

Orientation should include four components:

1. The Hospital
2. The Board and Governance
3. Hospital Partners
4. The Health Care Environment

The board should periodically review the quality of its orientation program. Directors should receive materials that support the orientation in a format that allows the materials to be updated from time to time.

All new directors should be required to attend and current directors should be invited to attend. Directors beginning a renewal term should strongly be encouraged to re-attend to refresh their knowledge and to serve as a resource to new board members.

## Board Education

### *Governance Principles*

Individual directors have a responsibility to be knowledgeable about the health care environment, the hospital and their responsibilities as directors.

Director education should be facilitated through:

- Board education sessions at regular board meetings and as part of board retreats. The content of education sessions should include the external health care environment, hospital operations and the board's governance obligations.
- Regular distribution to all board members of appropriate education and information materials.
- Establishing a policy that permits and encourages directors to attend educational programs with reimbursement of reasonable expenses. Some hospitals have established policies that require ongoing board education.

## Board Evaluation

### *Governance Principles*

The purpose of ongoing evaluation is to ensure the maintenance and improvement of governance processes. The board should commit to act upon the results of the evaluation. The following areas are all potential areas for evaluation:

- Director Performance
- Collective Board Performance
- Board Chair Performance

- Board Meeting Evaluation
- Committee Member Evaluation
- Committee Chair Performance
- Committee Meeting Evaluation
- Board Retreat Evaluation
- Orientation Session Evaluation

In each potential area of evaluation the following matters should be considered:

- What is the purpose of the evaluation?
- Who should complete the evaluation?
- How frequently should evaluation occur?
- Will the process be anonymous?
- How will results be shared?
- What process will be established to ensure results are acted upon?

An evaluation routinely done without a plan to act upon the results does not further the purpose of continuous board improvement.

## Guidelines for Implementing Effective Evaluations

### *Evaluation of Individual Director's Performance*

An evaluation of a director's performance can either be a self-assessment evaluation, sometimes done by a director as part of the annual board evaluation, or it can be a peer evaluation. It is less common to find hospitals conducting peer evaluations, however, this approach involves every member of the board evaluating the performance of every other board member and must be carefully undertaken.

Whether the director's evaluation is done on a self-assessment or a peer evaluation basis, feedback on director performance should be routinely provided by the chair or through resources that are external to the board.

The most common practice is for a director's term to be three years renewable for a maximum of six or nine years. Accordingly, the board needs to ensure

that it has a mechanism in place to improve the performance of a director prior to the expiration of each director's term.

The evaluation tool should ask questions in areas that are relevant to individual director performance including:

- Preparation for board and committee meetings.
- Participation in discussions at board and committee meetings.
- Understanding of the board's governance role.
- Application and contribution of the individual director's expertise.
- Behavior both inside and outside the boardroom.
- Adherence to board policies, especially conflict of interest policies and the board Code of Conduct.
- Respect for the principle of board solidarity.

It may be appropriate for the board to provide resources to a director to improve his or her performance, such as coaching and mentoring. The results of individual director evaluations should also be taken into account when considering renewal terms for incumbent directors. The board culture should reinforce that renewal of board terms is not automatic.

### Evaluation of Collective Board Performance

There are a number of evaluations, surveys and questionnaires that are used by hospitals to evaluate the performance of the board. Generally speaking, these surveys and questionnaires evaluate the board in the following areas:

- Board composition and structure
- Board systems and processes
- Board committees
- Board meetings
- Board performance and effectiveness

The Center for Healthcare Governance's Governance Assessment Process (GAP) provides survey instruments, data tabulation and analysis and other resources for both full board and individual board member performance assessment, including peer evaluation. For more information visit [www.americangovernance.com](http://www.americangovernance.com).

It may be appropriate to periodically undertake a more extensive evaluation or audit of the board's governance practices using an audit tool.

Each year a board should carefully review the questions that are asked on its evaluation survey(s) to ensure that they are appropriate and aligned with the board's goals and objectives over the last year. In addition, care should be taken with the way in which some questions are asked. For example, asking an individual director if the board shares a common vision of its role may not in fact reveal that the board misunderstands its role. In other words, the board may share a common misunderstanding of its role. Accordingly, while it may take longer for individuals to complete such a survey it may be important, from time to time, to design a survey that requires narrative responses so that these answers can be compared to see if there is, in fact, a common vision among board members.

If the board survey also contains a component of self-evaluation, it would be usual to provide directors with a comparison of how they ranked themselves against the average rankings of the board as a whole.

Directors should understand how the information generated from the board effectiveness survey will be compiled and shared with the board. It will often be the role of the Governance Committee to ensure that the results of the evaluation are presented to the board as a whole and that results particular to any committee or board officer have been brought to the attention of that committee or board officer. The Governance Committee should be charged with developing a work plan based on survey results to ensure that any areas for improvement are acted upon.

### *Frequency of Completion*

There are many evaluations that could be undertaken by a board or its committees over the course of a year.

Care should be taken to ensure that evaluations are effectively used to improve individual performance, enhance collective board performance, improve board systems and processes and make decisions with respect to renewal of director terms and committee chair and officer positions. In addition, some questionnaires, if frequently completed, may become routine. This can be especially true with meeting evaluations conducted at the end of every board meeting. In addition, the timing of completing an evaluation is also important. For example, if the board conducts an evaluation of the effectiveness of its orientation session, it may be better to do so after those new directors who receive the benefit of the orientation session have attended two or three board meetings in order to assess whether or not the orientation has effectively prepared them for their role as directors. In addition, evaluating a director who is about to retire from the board may not be a prudent use of the time and energy that is required to complete the evaluation and tabulate and share results.

### *Evaluation of the Evaluations*

Periodically, the board should assess the types of evaluations it is undertaking and the appropriateness of the tools it is using. A board should also review and reassess its processes for sharing survey results and providing resources to ensure results are acted upon. It is particularly important that the board review those parts of its evaluation that relate to the board's performance to ensure that the questions asked are relevant to the most recent annual work plan. For example, where a hospital has undertaken a capital project, it may be important to have questions that are directed particularly to the board's performance around exercising its role in overseeing a major capital expansion.

### *Commitment and Buy-In*

It is important that board leadership emphasize the importance of self-evaluation and board evaluation.

Board and committee chairs should be open to evaluation of their performance and to acting upon constructive criticism.

## Frequently Asked Questions

### 1. *How does a board encourage directors to take advantage of educational opportunities?*

Directors should be encouraged to attend educational programs that are relevant to their role as directors. It is important that they are relevant to issues that will be appearing before the board and be brought to the attention of board members in sufficient time for them to be able to attend.

Accordingly, directors should be encouraged, if not required, to attend educational programs that focus primarily on governance issues, board members or those holding board leadership positions (e.g., orientation to the office of board chair).

Expectations with respect to attendance at educational conferences should be brought to the attention of board member candidates during the recruitment process. A board should take into account the director's participation in educational sessions as part of the director's evaluation and in renewing the director's term of office. In addition, a board should include, as part of its regular board education, sessions that address board governance.

Often, the education sessions that are conducted as part of board meetings focus on hospital operations or broader health care issues. While that is entirely appropriate, it is also appropriate to focus on board governance and directors' duties and obligations.

### 2. *When should evaluations be undertaken?*

Evaluations should be undertaken at a point in the board's year at which the information distilled from the evaluation may be acted upon. Similar decisions should be made with respect to every evaluation tool that the board chooses to use. For example, a retreat evaluation should be conducted immediately following the retreat, even though results might not be considered until planning for next year's retreat begins. Evaluations of director performance, whether as part of a peer review or self-evaluation, should be conducted sufficiently in advance of the expiration of a director's term to allow that director to act on the information and improve performance. Evaluations of the board orientation session should be conducted after new directors have attended two or three board meetings.

## Sample Tools

The following tools will help you apply the concepts in this chapter to your board's work. These tools are also available online at [www.americangovernance.com](http://www.americangovernance.com).

# Sample Board Orientation Manual Index

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

## **Part I**

### **The Hospital**

1. Mission, Vision and Values
2. Legal Framework
3. Corporate Structure
4. Overview of hospital programs and services
5. Strategic Plan
6. Operating Plan/Annual Budget
7. Performance Measures and Reports
8. Advisors
9. Administrative Staff Organizational Chart
10. Medical Staff Relationship and Structure

## **Part II**

### **The Board and Governance**

1. Functions
2. Composition and Structure
3. Role of the Board
4. Duties, Obligations and Expectations of Individual Directors
5. Ethics
6. State and Federal Legislation
7. Board Policies [See recommended list of Form 990 policies.]
  - (a) Board Code of Conduct
  - (b) Conflicts of Interest
  - (c) Confidentiality
  - (d) Whistleblower
  - (e) Document Destruction and Retention
  - (f) Executive Compensation
  - (g) Joint Venture and Investments
  - (h) Minutes
8. Committees of the Board
  - (a) Committees Defined and Their Roles
  - (b) Committee Charges and Workplans
  - (c) Committee Terms and Definitions
  - (d) Officers - Terms and Roles

9. Board Education and Evaluation
  - (a) Board Education and Development Process
  - (b) Board Education Requirements
  - (c) Board Evaluation Practices
  
10. Board Resources
  - (a) By-laws (Hospital and Medical Staff)
  - (b) Policies (as previously discussed)
  - (c) Summaries of Relevant Legislation and Regulation
  - (d) Overview of Board Liability Issues and Protections

### **Part III**

#### **Hospital Partners**

1. Volunteer Association
2. Foundation
3. Key Community Partners
4. Copies of Hospital Publications

### **Part IV**

#### **Health Care Environment**

1. Health Care Industry Issues and Trends
2. Local Market Issues and Trends

# Sample Board Peer Assessment Questionnaire for a Community Hospital

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

Trait/Characteristic	Director 1	Director 2	Director 3	Etc.
Reads materials and comes prepared for meetings				
Participates - actively engaged at meeting				
Supports and promotes the hospital				
Consistently demonstrates integrity and high ethical standards				
Complies with the conflicts of interest policy				
Respects confidentiality as required				
Communicates ideas and concepts effectively				
Listens well and respects those with differing opinions				
Thinks independently – will express view contrary to the group				
Inquisitive – asks appropriate and incisive questions				
Thinks strategically in assessing the situation and offering alternatives				
Exhibits sound, balanced judgment for the benefit of all stakeholders				
Develops and maintains sound relationships – a team player				
Understands the role of board committees				
Understands and respects the role of the chair				
Demonstrates financial literacy though not necessarily an expert in the field				
Demonstrates understanding of quality and patient safety issues though not necessarily an expert in the field				
Effectively applies and contributes his/her special skills, knowledge or talent to the issues				
Supports board decisions - acts as one on all board actions once the decision has been made				
Contributes effectively to board performance				
Self ( <i>Identify yourself by a check in this column</i> )				

<b>Scoring</b>		
4	Outstanding/Above Average	Consistently performs beyond expectations; does more than is expected of a director; frequently contributes more than average.
3	Fully Satisfactory	Consistently demonstrates the quality at a standard expected of a director; a solid performer.
2	Adequate	Demonstrates the expected qualities but may be inconsistent in the demonstration or has minor weaknesses that could be improved with attention.
1	Could Improve	Would benefit by modifying this aspect of his/her behavior to conform to the expectations.
X	N/A	Cannot assess the individual on this question; lack exposure to, or knowledge of, demonstrated behaviors or traits.

# Board Evaluation Process Overview

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

<b>Evaluation Tool</b>	<b>Purpose</b>	<b>Completed By</b>	<b>Frequency of Completion</b>	<b>Results Evaluated By</b>	<b>Action and Timeline</b>
Orientation Evaluation	To assess and improve board orientation program	Attendees at orientation	After new directors have attended two or three board meetings	Board Governance Committee	Review and revise orientation program prior to next year's orientation.
Board Retreat	To assess and improve board retreat	Attendees at retreat	At the end of each board retreat	Retreat Planning Committee	Provide input into the next board retreat.
Board Meeting	Improve meeting performance	Directors	At the end of each meeting (depending on the number of meetings – not more than quarterly)	Chair/CEO/ Board Secretary	Periodic review of results reported to board and taken into account in agenda development and meeting processes.
Board	Improve board performance	Board	Annually	Governance Committee	Governance Committee makes report and recommendations to the board.
Individual Director	Self-improvement; renewal of term	Director and peers on the board	Annually	Board Chair/ Vice Chair	Chair communicates to board member. Reports results to committee responsible for board nominations if director is being considered for a renewal term.
Committee Member	Self-improvement; renewal of term	Committee member and peers on the Committee	Annually	Governance Committee and reported to Board Chair.	Board chair provides results to committee member. Governance Committee considers results in recommending committee members.
Chair	Self-improvement; renewal of term	Chair and directors	Annually	Governance Committee	Chair of governance committee meets with board chair.

<b>Evaluation Tool</b>	<b>Purpose</b>	<b>Completed By</b>	<b>Frequency of Completion</b>	<b>Results Evaluated By</b>	<b>Action and Timeline</b>
Committee Chair	Self-improvement; renewal of term	Committee Chair; Committee Members	Annually	Chair of Governance Committee or Board Chair	Governance Committee chair or board chair meets with the committee chair; considered by Governance Committee in making recommendations for committee chairs.
Committee	Improve, revise or reconfirm existing committees. To evaluate and recommend new or continuing committee member	Board	Annually	Board Chair/Board Governance Committee	Considered by Governance Committee in making recommendations regarding existing committee work and membership

1. These evaluation tools can be combined. Completion of all of the potential evaluation tools can lead to “evaluation fatigue.”
2. There is a risk that evaluations that are done too frequently can lose their effectiveness. For example, it may be more appropriate to conduct periodic evaluations of board or committee meetings.
3. Results should be evaluated by the person or committee charged with making decisions that are relevant to the results of the evaluation. Where the purpose is self-improvement the results should be confidential and communicated respectfully by the board chair.
4. In cases where there is a significant board behavior issue, an outside evaluation could also be considered. Some hospitals have had an independent consultant or other outside resource observe board proceedings and present a report to the board or give confidential feedback to individual board members.

# Sample Committee Assessment

## Board Audit and Compliance Committee

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

This self-assessment tool will provide you an opportunity to evaluate our committee's performance and contributions. The tool contains 26 items and will take about 10 minutes to complete; a small investment in our committee's continuing development.

- **Skim through the entire inventory**, and familiarize yourself with it, before responding to any of the items.
- **Clearly circle only one response for each item**; ranging from 5 (meaning you agree) through 3 (meaning you somewhat agree) to 1 (meaning you disagree). In addition, where there is only a 1 or 5, please regard 1 to mean no or false and 5 to mean either yes or true.
- **Focus** exclusively on our committee at the present time.
- **Be discriminating.** We often receive inventories where the responses are uniformly high. This is unrealistic; all committees excel in some areas and are poor in others. Your responses should be distributed across the full five point scale reflecting the diversity of your board's characteristics and performance.
- **Be candid.** Undertake an honest assessment. All boards excel in some areas and don't in others; your responses should reflect this.

### 1. Charter and Composition

	LOW (No/False)		MEDIUM		HIGH (Yes/True)
1. The committee has a clear and appropriate charter.	1	2	3	4	5
2. The committee has the right number of members.	1	2	3	4	5
3. The committee has members with the skills and expertise that are needed by the committee.	1	2	3	4	5

### 2. Committee Management

	LOW (No/False)		MEDIUM		HIGH (Yes/True)
4. The committee meetings are of an appropriate length.	1	2	3	4	5
5. I received orientation to the committee that was helpful to me as a member of the committee.	1	2	3	4	5
6. The committee is receiving the support from management that it requires.	1	2	3	4	5
7. Information is received at least one week in advance of the meeting.	1	2	3	4	5
8. The committee meets the right number of times over the year.	1	2	3	4	5

### 3. Committee Effectiveness

	LOW (No/False)		MEDIUM		HIGH (Yes/True)
9. Overall the committee is working effectively.	1	2	3	4	5
10. The committee makes good use of my time.	1	2	3	4	5
11. The committee performed its annual work plan.	1	2	3	4	5

#### The committee is effectively performing its role in the following areas:

12. Selecting the independent public accountants for the annual audit.	1	2	3	4	5
13. Reviewing the annual audit and making recommendations to the Board about its findings.	1	2	3	4	5
14. Reviewing the results of internal audit projects quarterly.	1	2	3	4	5
15. Reviewing the performance of the internal auditors annually.	1	2	3	4	5
16. Meeting privately with the independent outside auditors to review their opinions, any restrictions placed on them by management and any significant concerns.	1	2	3	4	5

### 4. Chair Effectiveness

	LOW (No/False)		MEDIUM		HIGH (Yes/True)
17. The chair is prepared for committee meetings.	1	2	3	4	5
18. The chair keeps the meetings on track.	1	2	3	4	5
19. The chair fairly reports the committee's work to the board.	1	2	3	4	5
20. The chair encourages participation and manages discussion.	1	2	3	4	5

### 5. Committee Culture

	LOW (No/False)		MEDIUM		HIGH (Yes/True)
21. Committee members listen to, and consider/respect, each others' ideas and opinions (even when disagreeing with them).	1	2	3	4	5
22. When presented with proposals/recommendations, this committee challenges them, questioning: premises/assumptions; consistency with the organization's vision and key goals; analytical underpinnings; and best/worst case outcomes.	1	2	3	4	5
23. Committee members are comfortable expressing dissenting opinions and voting "no."	1	2	3	4	5
24. Members have collegial relationships with one another.	1	2	3	4	5

### 6. Overall Committee Performance

	LOW (No/False)		MEDIUM		HIGH (Yes/True)
25. Overall, I am satisfied with my contribution to the committee.	1	2	3	4	5
26. Overall, I am satisfied with the committee's contribution to the board.	1	2	3	4	5

# Board Committees

There are no committees that a board is required to establish.

## Legal Requirements

Although most states do not require any committees of the board, the corporate law of the state of incorporation should be reviewed to determine whether any committees of the board are mandatory. In the absence of any statutory requirement for committees of the board, the articles of incorporation or the by-laws of the corporation will dictate which, if any, committees are standing committees and whether the board has the authority to appoint *ad hoc* committees. Accordingly, the board can decide upon the number of committees and their composition and work plans. Committees can be an important means to facilitate the board's ability to fulfill its governance role.

## Governance Principles

- Assuming there are no statutory committees required to be established by a hospital board, the number and type of committees are within the discretion of the board.
- There is no requirement that board committees be set out in the by-laws although many organizations have standing committees for certain activities. A common practice is for the by-laws to contain language empowering the board to establish, amend and disband committees from time to time.
- Unlike the board, which has an inherent role to govern the affairs of the hospital, committees have no inherent role. The only exception is the Executive Committee, which may be empowered to set policy or make decisions on the board's behalf in specific circumstances.

- Committees should be established by the board to assist the board with board work. Committees take their mandate from the board.

The principle purpose for the establishment of a committee is for the committee to do the work the board does not have time or expertise to do.

Committees also:

- Provide a training ground for future board leaders;
- Permit greater discussion and more in-depth analysis than would be allowed during a board meeting; and,
- Allow individual board members the opportunity to contribute their special expertise.

Committee members should receive orientation to the committee. The board's role with respect to its committees is to:

- Ensure the by-laws provide the board with the flexibility to establish, amend and disband committees from time to time.
- Determine what committees are required with reference to the board's workload, the board's role generally, and the specific issues that will face the board in the next year.
- Establish standing committees as needed—those whose duties are often continuous, but whose purpose and work is evaluated annually. Task or *ad hoc* committees should have a sunset provision that disbands the committee when its task is completed.
- Rely on the work of committees and not redo the committee work at the board level.

- Ensure a process is in place to select committee members and appoint a committee chair.
- Approve annual work plans for committees.

The board chair is usually charged with selecting committee chairs and committee members, although sometimes this is the role of the board's Governance or Nominating Committee. Where selection of committee chairs and members is done by the Governance or Nominating Committee, it is usually presented as a recommendation to the board.

## Types of Committees

### *Board Standing Committees*

The most common board standing committees are those established to perform the following roles on behalf of the board:

- Governance
- Finance
- Quality and Patient Safety
- Strategic Planning
- Executive Committee
- Compensation
- Compliance
- Nominating

For sample charters for several board committees go to [www.americangovernance.com](http://www.americangovernance.com).

## Frequently Asked Questions

### *1. Can non-directors serve on committees?*

Yes, however, a board should consider a number of factors in determining whether or not to appoint individuals who are not directors to a board committee.

#### Pros

- May provide an opportunity to evaluate potential new board members.
- May allow the board to avail itself of a specialized expertise required of a committee, particularly where the board may have had challenges

recruiting a required skill to the board. The time commitment for committee participation is lighter than the time commitment required of a board member and may attract a broader base of potential candidates.

#### Cons

- Committee members who are not also on the board do not see the whole picture.
- There may be some committees, such as the Governance Committee, where it is not appropriate to have non-directors participate because they will not be familiar with all members of the board, or see all of the board's processes.
- The fiduciary duties to which a director is subject are clear, including the duty of confidentiality and the duty to avoid conflict. Non-directors serving on committees should be asked to sign confidentiality and conflict of interest agreements with the hospital and to adhere to and respect policies applicable to members of the board. Particular attention needs to be paid to the orientation of non-board committee members, as they may not receive, or be subject to, the same orientation that board members receive.

### *2. Should the Audit Committee be comprised of outside, independent directors?*

There is no requirement for the Audit Committee to be comprised of persons who are external to the hospital, although many nonprofit boards are following the lead of their for-profit counterparts and ensuring that the membership of the Audit, Executive Compensation and Governance/Nominating Committees are composed entirely of independent board members, as provided for by the Sarbanes-Oxley Act. The Audit Committee performs an important role on behalf of the board in supervising the external auditors, including setting the scope of the audit, receiving the audit report, and receiving any recommendations that may be made by the auditor, with respect to management and internal control matters. Similarly, there is no reason why the

individuals who comprise the Audit Committee cannot also be members of the board committee that is responsible for business and/or financial matters.

Current best practice is for the Audit Committee not to be comprised of any members of management, including the CEO. The Audit Committee should be comprised of independent directors who are not related to the hospital.

### **3. *Can committees make decisions that bind the board?***

While a board's governance role cannot be delegated, a board may expressly authorize a committee to make a decision that is binding on the board. In providing such express authorization the board is subject to the same standard of care that applies to any board decision. It must be reasonable and prudent and in the best interests of the hospital for the committee to have the authority to make a decision binding upon the board. Accordingly, a committee may be given such decision-making authority subject to parameters or limitations set by the board.

### **4. *Can staff members vote as members of committees?***

Depending on the role of the committee and its charter, it is not uncommon for staff members of committees to have a vote considered. The more common practice however, is to allow only members of the board to vote on committee decisions that are delegated and binding on the board.

### **5. *Does the principle of board solidarity apply to a committee?***

The general practice is that committees are advisory. The board receives recommendations from the committee and then, if a decision is required by the board, a vote is taken at the board level. A committee member is not bound to vote with the majority of the committee when the matter comes to the board. A committee member should, however, not blindside his or her committee chair in the boardroom. If a committee member who disagrees with a recommendation of a committee wishes to make a "minority report" to the board, the

committee member should advise the committee chair and the board chair in advance. Any such report should be done in a way that is respectful of the work of the committee.

### **6. *Can committees meet by telephone?***

Yes. This is typically authorized in the by-laws.

### **7. *Can any board member attend any committee meeting?***

Subject to any provisions in the hospital's by-laws or governance policies, there is no prohibition on a director who is not a member of a committee attending that committee's meetings. Such practice should, in general, be discouraged. Attendance of a board member at a committee meeting to which that member has not been appointed can potentially be disruptive to the working of that committee, as the non-committee member will not have the continuity of participation in the committee's meetings. Directors should respect the committee assignments that are made either by the board chair or by the Governance Committee.

### **8. *Should a board have an Executive Committee? What is the common practice?***

An Executive Committee can add value to a board's governance processes if it has clear roles and responsibilities and does not usurp the role of the board.

An Executive Committee adds value when it provides a forum for advice and counsel to the chair and CEO, aids in planning the board's annual work plan and ensures the board maintains a focus on strategic directions. The Executive Committee may also add value when it undertakes work on behalf of the board, such as the CEO evaluation, provided it does so subject to the direction and final approval of the board.

## **Sample Tools**

The following tool will help you apply the concepts in this chapter to your board's work. These and other tools for committees are also available online at [www.americangovernance.com](http://www.americangovernance.com).

# Sample Committee Terms and Definitions

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

Committee Terms and Definitions	
Charge	A general statement of the committee's purpose or charge should be set out. The charge should be relevant to the work of the board.
<i>Example</i>	The role of the Governance Committee might be expressed as: "To advise the board on matters relating to the board's governance structure and processes, evaluation of board effectiveness, recruitment, education and evaluation of board members."
Responsibilities	A specific list of activities the committee is to undertake
<i>Example</i>	Governance Committee responsibilities might include: <ul style="list-style-type: none"> <li>• Review bylaws and recommend revisions as required;</li> <li>• Conduct process for succession, interviewing and recommending candidates for election to the board; and,</li> <li>• Evaluate effectiveness of board governance structures, policies, and processes and recommend changes as required.</li> </ul>
Membership and Voting	Set out the number of appointed and <i>ex-officio</i> committee members and whether they are voting or non-voting.
<i>Example</i>	Voting members: <ul style="list-style-type: none"> <li>• Chair of the board;</li> <li>• At least four directors appointed by the board;</li> <li>• CEO as an <i>ex-officio</i> member.</li> </ul> Non-voting member: <ul style="list-style-type: none"> <li>• Vice President of Planning</li> </ul>
Chair	Describe who the chair will be.
<i>Example</i>	<ul style="list-style-type: none"> <li>• A member of the committee appointed by the board.</li> </ul>
Frequency of Meetings and Manner of Call	Specify if a minimum number of meetings must be held.
<i>Example</i>	At least quarterly at the call of the committee chair.
Quorum	If there are non-board members on the committee, the quorum should reference the board members.
<i>Example</i>	51% of the committee members, provided a majority of those present are board members - OR - 51% of the members entitled to vote.
Resources	Specify if a member of management is to be assigned to the committee as a resource and committee support.
Reporting	Specify how the committee reports. It will usually be to the board, but a sub-committee may report to a committee.
<i>Example</i>	To the board.
Date of Last Review	

# Meeting Processes

There are a number of elements of a board's meeting processes that contribute to the board's effective governance, including frequency of meetings, process to establish agendas, order in which matters are dealt with on agendas, availability of supporting materials, quality of minutes, conduct of the meeting by the board chair and processes with respect to open and *in-camera* meetings.

It should be noted that the board's meeting processes, including agenda structure and appropriateness of materials, are only one of the ingredients that ensures effective quality of decision-making and oversight. Ensuring a qualified and skilled board that has a clear understanding of its governance role, together with ensuring appropriate behavior in the boardroom, are also critical ingredients that help board meetings contribute effectively to discharging the board's governance role.

## Board Meetings

### *Legal Requirements*

#### Notice

- Notice of a board meeting must be given in accordance with the by-laws or, if the by-laws are silent, the applicable corporate law of the state of incorporation.

#### Number of Meetings

- Generally, there must be at least one meeting annually but the minimum number of board meetings will be specified in the by-laws of the corporation and if the by-laws are silent, state law governs.

#### Quorum

- A quorum ensures that enough board members are present at a meeting to enable the board or board committee to make decisions. An example of a quorum would be to require that 51 percent of the board members, or of board members entitled to vote, be present in order for a meeting to occur. Some decisions of the board may require a super-majority (more than 51 percent) and thus, a quorum for such votes should correspond.

#### Minutes

- The hospital is required to keep minutes of all board meetings and should consider retention of copies of board committee proceedings and meetings. Minutes signed by the chair of the meeting or the chair of the next succeeding meeting are proof of corporate authority and action.

#### Unanimous Consent

- In lieu of a meeting, some organizations and corporate statutes allow for corporate action by unanimous consent in writing.

#### Telephone Meetings

- A meeting of a board of directors or board committee may take place by telephonic, electronic or other communication facilities that permit every director to simultaneously and instantaneously hear every other director.

### *Governance Principles*

#### Notice

- The by-laws should specify the manner of giving directors notice of a board meeting and

the required amount of notice for calling meetings of the board.

- Because directors are expected to attend all board meetings, there is no requirement that the notice of a board meeting specify the business for which the meeting is called. It is, however, a good governance practice to provide the agenda together with reports and information sufficiently in advance of the meeting to allow directors to come to the meeting prepared for the board discussion.
- The usual practice is for the by-laws to:
  - allow for the board to set a regular date and time for board meetings for which no additional notice is required once general notice has been given. The by-laws should not specify when the regular meeting is held, but rather empower the board to adopt, from time to time, a date and time for regular board meetings.
  - provide for the amount of notice required for special board meetings.
- Notice of meeting can be waived in accordance with the by-laws adopted by the hospital. If a director participates in a meeting for which notice has not been given, participation in the meeting constitutes waiver of notice. Directors should provide the board secretary with up-to-date contact information so that they are able to be reached and to participate in a board meeting by telephone if they are unable to attend in person.

### Number of Meetings

- The board should develop an annual board work plan, and should set the number of regular board meetings based on that annual work plan.
- Although the general practice has been for hospitals to hold meetings monthly or bimonthly, there is no reason a board cannot vary from that pattern if the board's annual work plan justifies a different meeting schedule.

### Conduct at the Meeting

- The board chair is responsible to ensure that the meeting is conducted in accordance with a proper process.

### Attendance at Meetings and *In-Camera* Meetings

- It is the duty of a director to attend all board meetings and the meeting of all committees to which the director is appointed.
- Not only is it a director's duty to attend board meetings, but it is also the right of the director to attend a board meeting. Accordingly, a director cannot be excluded from a board meeting unless the by-laws or a board-adopted policy (such as the conflict of interest policy) so provides.
- It is customary for the conflict of interest provisions either in the by-laws or in board-approved policies to provide that the director with a conflict absent himself or herself from the meeting while the matter at issue is being discussed and voted on.
- With the exception of public or governmental entities, no persons other than the directors are entitled to attend a meeting of the board. Any other attendees at board meetings are considered to be the guests of the board. Guests may attend board meetings either:
  - on the invitation of the chair;
  - with the consent of the meeting; or,
  - in accordance with a board-adopted policy.
- Where the board has a practice of inviting individuals to attend board meetings, the board should have a board-adopted policy with respect to how the board will move *in-camera*, that is, to close its proceedings to outsiders.
- Where board meetings are open to the public, the board should adopt a policy with respect to the attendance of the public at its board meetings. The procedures with respect to the attendance of the public and the board's ability to move *in-camera* should be set out by the board in a board-approved policy that can be amended and

modified by the board from time to time. The policy, with respect to the attendance of the public at board meetings, should include the following:

- **Notice of board meetings** — The policy should address how the public will be made aware of board meetings. While a board may wish to broadly advertise meetings, it is a good idea not to advertise all board meetings in local newspapers, but rather to provide that notice will be posted in the hospital and on the hospital’s Web site.
- **Meetings open to public** — The board may want to provide that only its regular meetings are open to the public and that any special meeting—which is more likely to have been called to deal with the type of matter that can only be dealt with *in-camera*—not be required to be open to the public.
- **Distribution of agenda** — It is advisable to provide that the agenda will be available from the board secretary, but not undertake an obligation to mail or otherwise circulate the agenda to the public. Copies of the agenda can be made available at the meeting.
- **Distribution of other materials (minutes and board supporting material)** — The board should carefully consider the amount of material that it will undertake to make available to the public. The general rule is that only a director is entitled to see directors’ minutes and accordingly, careful consideration should be given as to how minutes of an open portion of a board meeting or other supporting materials will be made available.
- **Submission or presentation to the board** — Where members of the public are permitted to address the board, there is usually a requirement that they give notice of the subject matter and contact the board secretary in advance of the meeting. The policy may also state that the board is not obligated to hear from members of the public and that permitted presentations are time-limited.

- **Excluding the public/*in-camera* portion.** The policy should provide for both the process to move *in-camera* and the subject matters that must be dealt with *in-camera*. The matters that would typically be dealt with *in-camera* would be:
  - professional staff appointments, re-appointments and credentialing issues;
  - matters involving litigation;
  - material contracts;
  - human resources issues;
  - patient issues;
  - matters involving property; and,
  - any matter that the board determines should be the subject of an executive session.

### *Agendas and Minutes*

- Board agendas are the responsibility of the board chair and are usually prepared by the board secretary with input from the board chair and the CEO.
- Agendas should allot a time for each item to be used as a guide by the board chair.
- The board chair should ensure that items requiring a decision of the board be dealt with during that portion of the meeting where there is maximum board attendance (i.e., latecomers have arrived, and those who need to depart early have not yet left).
- Agendas should clearly distinguish between items requiring decisions, items that are provided for information only, and those items that are for discussion with an anticipated decision at a future meeting.
- Where the board will be relying on the reports of external advisors, the board chair should ensure that those external advisors have either been invited to the meeting or will be available to participate in the meeting by telephone to answer questions and provide additional information to the board.

- The chair should apply flexibility to both the time allowed for individual meeting items and the order in which the agenda is presented. Allotted time should be treated as a guide only.
- There is no requirement for the agenda to include a declaration of conflict of interest—directors are expected to self-declare their conflict. It is, however, a good practice to include this item to provide a constant reminder to directors of this obligation.
- There is no requirement to have the board formally approve the agenda. It is, however, a good practice to ask whether there are any additional items for inclusion in the agenda at the opening of the meeting so that the chair can take those items into account in considering the order of the agenda and the time allotted for various agenda items.

## Frequently Asked Questions

### 1. *Recommendations for governance practices in the for-profit sector often include a recommendation that the board, or the independent directors on the board, meet without management. Should this apply to a hospital?*

It is a good practice for the board to occasionally meet without members of management present for the purposes of overseeing the board's relationship with management and in particular, assessing the quality of the information that the board is receiving from management.

Where the CEO is an *ex-officio* member of the board, the CEO should be excluded from these meetings as one of the means by which the board oversees management. Some hospital boards have adopted a process of beginning or ending every board meeting with a short session at which no members of management are present.

### 2. *How does a board ensure that it fosters a culture of respectful behavior in its boardroom?*

The steps a board can take to ensure that it has a board culture of respectful behavior begin when the board identifies the qualities that it wants of its

directors. The desired qualities for a board director must include more than skills and experience but should also address intangible qualities such as integrity, loyalty, ability to work as part of a team and the ability to express ideas and disagreements constructively. Accordingly, the recruitment process must not only identify those qualities but must include some measure of evaluating a candidate against those qualities.

The second step to ensure respectful boardroom behavior involves training. Board orientation must include training not only about hospital operations and the role of the board, but also about the duties and behavioral expectations of a director. Adopting a director position description that addresses required behavior is an important step for a board to take.

Ultimately, it falls to the chair to maintain a culture of respectful behavior in the boardroom. The chair does this through management of the meeting (declaring certain behavior out of order) and also through taking responsibility to ensure that director evaluations are performed and that results are constructively conveyed to directors. Some boards have also assigned more senior board members as mentors to new members to ensure that the board's culture of respectful behavior is modeled for new directors.

The last resort for a board is to request that a director resign before the expiration of his or her term or, failing that action, to ensure that the board understands that re-election is not automatic and board behavior is one factor that will be taken into account in determining whether or not a director will be asked to reapply for a position on the board.

It is also important to minimize the number of *ex-officio* positions. Where the board cannot control the skills, qualities or behavior of the individual that holds an *ex-officio* office, the board is at greater risk of having the behavior of that individual be potentially disruptive to the board.

The board's Code of Conduct should make it clear that where a director fails to adhere to his or her fiduciary duties and is an *ex-officio* director, the board chair may approach the organization that the director represents and request that the director be removed.

### **3. *Who is responsible to ensure that board meetings are effective?***

Every board member has a duty to contribute to the effectiveness of board meetings. It ultimately falls to the board chair to ensure that meetings follow a proper process and facilitate and forward the business of the board. The board chair can only do so, however, if the appropriate ingredients have been put in place. Those ingredients require proper identification of the skills and expertise required on the board, sound recruiting processes to ensure a qualified board, initial board orientation and ongoing education that addresses the role of the board and the director's fiduciary duties and obligations and resources to improve board

performance. Those ingredients may or may not be in place when a board chair assumes office.

The board chair does, however, have an over-arching responsibility for the quality of the board's governance and should consider practices in those areas of board performance that may require improvement. The board chair is also responsible to focus the board on governance issues and avoid unduly delving into areas that more properly belong to management. Finally, the board chair, with input from the CEO and the assistance of the board secretary, structures the agenda in order to ensure that the board focuses on areas that are consistent with the board's annual work plan, further the strategic directions of the hospital and deal appropriately with board and not management matters.

### **Sample Tools**

The following tools will help you apply the concepts in this chapter to your board's work. These tools are also available online at [www.americangovernance.com](http://www.americangovernance.com).

# Sample Meeting Requirements (varies state by state)

*Note: The following is intended to be an example that boards should adapt to meet their individual needs and state requirements.*

	<b>Board Meetings</b>	<b>Committee Meetings</b>
Manner of Giving Notice	Personally, by mail, email or facsimile	Same as board
Length of Notice	Five (5) days (states vary)	Same as board (states vary)
Quorum	Majority of the board	Majority of the committee members
Telephone Meetings	Permitted	Permitted
Resolutions in Writing in Lieu of Meeting	Permitted if all directors sign	Permitted if all committee members sign
Open to the Public*	Varies by state if public hospital	Varies by state if public hospital
Frequency	Annually	Annually
Minutes	Required	Required unless otherwise directed by the board
Proxy Voting	No	No

# Sample Policy for Open Board Meetings for Public or Government Hospitals

*Note: The following is a high-level summary of a sample policy and requirements will vary by state. This sample policy only applies to public or government hospitals.*

## **Purpose**

The public and staff are welcome to observe the open portion of the board's meeting to:

- Facilitate the conduct of the board's business in an open and transparent manner;
- Ensure the hospital maintains a close relationship with:
  - the public,
  - media,
  - stakeholder groups.
- Generate trust, openness and accountability.

## **Policy**

Members of the public are invited to attend the meetings of the board in accordance with the following policy:

### **• Notice of Meeting**

A schedule of the date, location and time of the board's regular meetings will be available from the board office and will be posted on the hospital's website. Changes in the schedule will be posted on the website.

### **• Attendance**

To ensure adequate space is available, individuals wishing to attend must give at least 24 hours' notice to the board secretary. The board may limit the number of attendees if space is insufficient.

### **• Conduct During the Meeting**

Members of the public may be asked to identify themselves. Recording devices, videotaping and photography are prohibited.

The chair may require anyone who displays disruptive conduct to leave.

### **• Agendas and Board Materials**

Agendas will be distributed at the meeting and may be obtained from the board secretary prior to the meeting. Supporting materials will be distributed only to the board.

### **• Executive Session or Closed Session**

The board may move for an executive session or hold special meetings that are not open to the public where it determines it is in the best interest of the hospital to do so. The chair may order that the meeting move to executive session or any director may request a matter be dealt with in executive session in which case a vote will be taken and if a majority of the board decides to do so the matter shall be dealt with in executive session.

The following matters will be dealt with in executive session:

- Matters involving property.
- Matters involving litigation.
- Material contracts.
- Human resource issues.
- Professional staff appointments, re-appointments and credentialing issues.
- Patient issues.
- Any matter that the board determines should be the subject of an executive session.

Guests or counsel may remain during an executive session with the permission of the chair or the consent of the meeting.

### **Requests for Interviews**

Members of the public may not address the board or ask questions of the board without the permission of the chair. Individuals who wish to raise questions with the board must contact the board secretary in advance of the meeting.

### **Committee Meetings**

Meetings of committees are not open to the public.

### **Contact Information**

Board Secretary.

[address, telephone and e-mail]

### **Approval Date:**

### **Last Review Date:**

# Sample Meeting Minutes and Records Policy

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

## **[NAME OF ORGANIZATION] MINUTES AND RECORDS POLICY**

The Board of Directors (the “Board”) and any and all committees and sub-committees of the Board authorized to act on behalf of the Board (“Committees”) of the [Name of Organization] (the “[Corporation/Foundation]”) are responsible for preparing and approving the minutes of meetings and any actions taken in lieu of a meeting in accordance with this Minutes and Records Policy (the “Policy”) to ensure contemporaneous documentation of decisions and actions.

Accordingly,

- The Board and all Committees shall appoint an individual to serve as Secretary to prepare minutes for all meetings.
- The Secretary will prepare minutes that reflect all decisions made by the Board or Committee, including details regarding resolutions adopted, motions made, and the identity of individuals who made or seconded motions.
- All records of minutes and actions taken in lieu of a meeting must be prepared before the later of the next meeting of the Board or Committee or 60 days after any final action is taken by the Board or Committee.
- Minutes must be circulated, reviewed and approved by the Board or Committee as being reasonable, accurate and complete within a reasonable period thereafter.

The foregoing Policy was adopted by the Board of Directors of the [Corporation/Foundation] on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

# Sample Meeting Effectiveness Survey (Board or Committee Meetings)

*Note: The following is intended to be an example that boards should adapt to meet their individual needs.*

## Overview

The purpose of a meeting effectiveness survey is to improve meeting quality and process. The survey or questionnaire usually asks questions aimed at evaluating the following:

- Quality and timeliness of materials.
- Effectiveness of the meeting.
- Agenda management.
- Effectiveness of the debate.
- Conduct of meeting participants.
- Effectiveness of chair.
- Overall satisfaction.

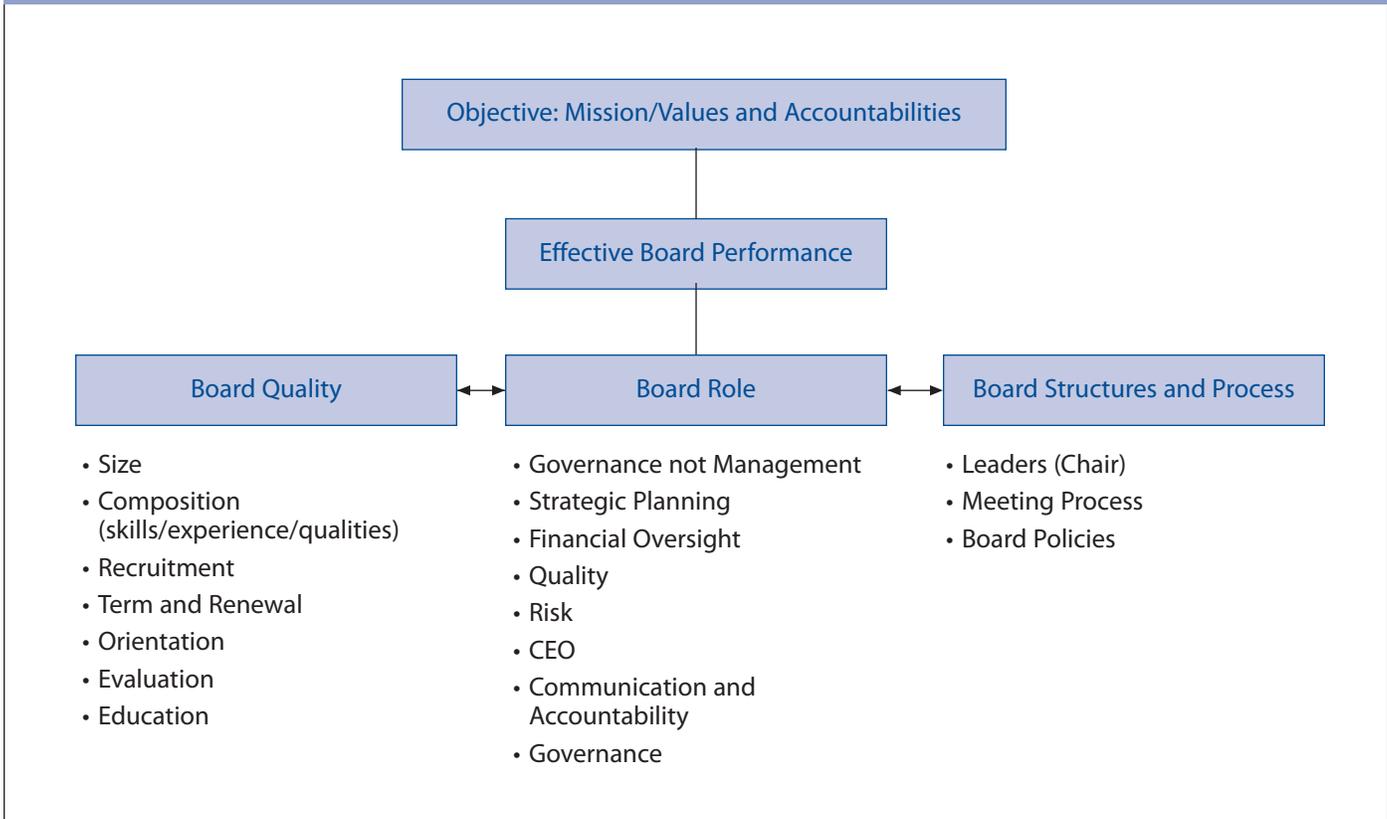
The survey should be short enough to be completed before participants leave the room. The results should be shared with the chair as soon as possible and should be periodically presented to the board.

1. Did you receive the materials, including the agenda, in sufficient time for you to prepare for the meeting?				
2. Were relevant materials provided?				
3. Were the materials sufficient to assist you in forming an opinion on decisions made by the board?				
Comments				
<b>Meeting Management</b>	<b>Satisfied</b>	<b>Somewhat Satisfied</b>	<b>Somewhat Dissatisfied</b>	<b>Dissatisfied</b>
4. Did the meeting start and end on time?				
5. Were you satisfied with your opportunity to participate in the debate?				
6. Were you satisfied with the manner in which other board members contributed to the debate?				
7. Was the chair effective in allowing all sides to be heard while bringing the matter to a decision?				
Comments				
<b>Overall Satisfaction with Meeting</b>	<b>Satisfied</b>	<b>Somewhat Satisfied</b>	<b>Somewhat Dissatisfied</b>	<b>Dissatisfied</b>
8. Were you satisfied with what the board accomplished?				
9. Were you satisfied with the board's overall performance?				
10. Were you satisfied that all participants were prepared for the meeting?				
Comments/Areas for Improvement				
Meeting Date:				
Meeting Type:				
Name of Committee:				

# Good Governance Practices for Hospitals

1. **Understand Hospital Accountabilities:** The board should adopt a statement of accountabilities for the hospital that identifies the multiple accountability relationships of the hospital corporation. The board must understand the hospital's accountability relationships. The objective of hospital governance is to ensure the organization fulfills its mission, operates in a manner consistent with its values, moves towards its vision and discharges its accountabilities.
2. **Understand the Board's Role:** The board should expressly adopt a statement that describes the areas in which the board exercises a governance role. A formal statement of board roles and responsibilities helps the board perform its governance role and exercise oversight of management's performance of its role. Certain board processes are dependent upon, and flow from, the board's understanding of its own role. For example, the board's annual work plan, committee structures, evaluations and board recruitment process all depend on the board's articulation and understanding of its own role.
3. **Understand Directors' Expectations:** The board should adopt a statement of the roles and responsibilities, duties and expectations of individual directors. Understanding the fiduciary duties and performance expectations of directors will help the board identify the qualities it requires of directors.
4. **Enhance Director Performance:** The board should adopt board policies that support and emphasize directors' duties and behaviors. The fiduciary duties that a director owes to the corporation should be reflected in, and reinforced by, formally adopted board policies such as a Conflict of Interest Policy, Board Code of Conduct, Board Attendance Policy, Education Policy and Confidentiality Policy.
5. **Determine Board Size for Effective Governance:** The board should periodically assess its size. The board should ensure that the number of directors (elected and *ex-officio*) will allow the board to have the skills, experience and qualities, including diversity, required to manage its workload, but not be so large as to prevent each director from contributing effectively. The Blue Ribbon Panel on Health Care Governance recommends that a board's size should fall within a 9- to 17-member range.
6. **Create a Skilled and Qualified Board:** The board should take responsibility for its recruitment and succession planning processes. The board should ensure processes for the recruitment and selection of directors will ensure the necessary skills, experience and qualities are recruited to the board and should eliminate or minimize risk of single issue candidates joining the board.
7. **Educate New Directors:** The board should ensure that it takes responsibility for orientation of new directors and conducts high-quality, mandatory orientation. Orientation should cover four areas: the hospital, the board and governance, hospital partners and the health care environment.
8. **Appoint Qualified Board Leaders:** The board should ensure that all board leaders, and particularly the board chair, are selected using processes that ensure those best suited will assume leadership positions. The board should develop a position description for the role of the board chair, and criteria and process for selection of the board chair. The board should ensure that all members understand and support the role of the chair.

**Figure 1: Effective Board Performance**



9. **Ensure Board Independence:** The board should ensure that it understands and discharges its role of independent supervision of management. There are a number of processes that will ensure that the board operates independently of management, including: ensuring that the chair and CEO are separate offices; having the board meet without management, from time to time; and ensuring that committees understand their role and their relationship to management.

10. **Establish and Use Board Committees Appropriately:** The board should ensure that it establishes its committees based on sound governance principles. Committees provide opportunities for supervision of management, allow members to contribute special expertise, and help the board do a more detailed review of board matters than time would allow during a board meeting.

11. **Ensure Meetings Enhance Board Performance:** The board should ensure that its meeting processes contribute to board effectiveness. The board must take responsibility for all aspects of board meetings, including: agenda setting; distribution of materials; provision of expert advice; attendance policies; and quality of board minutes.

12. **Commit to Continuous Improvement:** The board should state its commitment to continuous self-improvement through ongoing education and evaluation, and should adopt processes that support improvement in board performance.

Figure 1 illustrates the processes and structures that contribute to effective board performance. Effective board performance in turn contributes to ensuring the hospital fulfills its mission, operates in a manner that is consistent with its values, moves towards its vision and discharges and honors its accountabilities.

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