Responsibilities of Hospital Governing Boards

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**Trustees’ Job Number 1**

- Protect Hospital’s Assets
  - Quality patient care services
  - Qualified and competent healthcare providers
  - Effective compliance program

**Board Authority is Vested in the TEAM**

- Board
  - Governs and sets policy

To be distinguished from...

- Administration
  - Manages and implements policy
Board Retains Authority and Responsibility for:

- Hospital’s Business, Policies, and Assets
- Hospital’s Quality of Care
- Medical Staff Credentialing and Peer Review
- Hospital’s Compliance with all Applicable Laws and Regulations Governing Hospital Operations
- Effective Compliance Program

Board is Responsible to Ensure Safe and Adequate Facilities and Equipment
**Board Responsibility for Quality of Care Does NOT Relieve Physician Responsibility**

- Provide, and comply with, mechanisms to identify potential problems with physician-provided medical care and resolve them.

- Board has direct and independent responsibility to hospital’s patients.

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**Board Oversees Quality of Care by Taking Reasonable Steps to Ensure Providers are Qualified and Competent**
“All powers of the Medical Staff flow from the Board of Trustees, and the Staff must be held accountable for its control of quality.”

*Moore v. Bd. of Trustees*, 495 P.2d 605 (1972)

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**Board Does Not Actually Review Physicians’ Medical Decisions**

Board is Responsible for Implementing *Procedures* for Review of Physician Care
Responsibility for Compliance Starts with Board

- Experience/Diversity vs. Conflict
- Bylaws Procedure
- Conflict of Interest
- Duty of loyalty
- Inadvertent Conflict
- Intentional Self-dealing

Confidentiality is Key Board Responsibility
Maintain Confidentiality Around Medical Staff Issues

- Peer Review/Quality Review Information
  - Policy behind Privilege – Good Faith Peer Review Immunity – *Healthcare Quality Improvement Act*
  - State statutes - confidentiality
  - Waiver
  - Exceptions
    - Federal cases
    - Affected physician
    - Medical Board

Steps to Maintain Confidentiality

- Develop (and Comply with) Tight Procedures
- Cover Peer/Quality Review Activities
- Follow “Need to Know” Distribution Protocol
- Make Minimal Copies
- Count and Collect
Create “Clean” Minutes to Maintain Confidentiality

**Do**
- Summarize
- Be Accurate

**Don’t**
- Transcribe
- Identify Who Said What
- Include Personal/ Litigious Remarks

Impact of the Sarbanes Oxley Act on Hospital Boards
Sarbanes Oxley Act

Nonprofit organizations, including hospitals, expected to embrace financial accountability and reporting requirements of SOX, passed in 2002.

SOX designed to make organizations more accountable for exposure to financial risks

Aspects of SOX most relevant to hospital financial health
- Creation of separate audit committee with at least one expert in accounting and its relationship with audit company
- Issuance of financial statements
- Mechanisms for control and
- Ethics code for management and executive compensation

Best Practices per SOA

| Board meetings at intervals that allow accumulation of critical indicators for performance review | Evaluation of hospital performance by using well defined financial indicators (like market share) and defining normative targets (like capital planning) to facilitate achievement of positive results | Comparing multiple financial benchmarks with nationwide corresponding data may yield even more improvement for financial health of hospitals – financial comparative databank |

Proprietary & Confidential
Other Compliance Risks Facing Boards

• Fraud & Abuse
  ▪ Stark Physician Self-Referral Law
  ▪ Anti-Kickback Statute
  ▪ Patient Inducement Law
  ▪ Claims Submission - FCA
  ▪ Quality of Care

• Patient Confidentiality - HIPAA

• Tax Compliance
  ▪ Conflicts of Interest
  ▪ Private Inurement/Private Benefit

Board Due Diligence is Required to Navigate Compliance Risk

Healthcare Counsel

Compliance Program

Regular Board Compliance Reports

Regular Quality Reports

Accreditation/State Licensing Survey Results

Medical Staff Bylaws, Rules, Credentialing Procedures Reviews
OIG Compliance Oversight Guidance

• Published April 20, 2015

• Collaboration
  • Association of Healthcare Internal Auditors
  • American Health Lawyers Association
  • Health Care Compliance Association
  • Office of Inspector General of U.S. Department of Health and Human Services

• Intended to assist governing boards of healthcare organizations to carry out compliance plan oversight obligations

OIG Compliance Oversight Guidance

• Critical element of effective oversight is process of asking right questions of management to determine
  • Adequacy and effectiveness of organization’s compliance program,
  • Performance of those who develop and execute program and
  • To make compliance a responsibility for all levels of management
    o Compliance is an enterprise-wide responsibility, a “way of life”
OIG Compliance Oversight Guidance

• Board must act in good faith in exercise of its oversight responsibility, including making inquiries to ensure
  • A corporate information and reporting system exists and
  • Reporting system is adequate to assure Board that appropriate information relating to compliance with applicable laws will come to its attention timely and as a matter of course
• Board is expected to put forth a meaningful effort to review adequacy of existing compliance systems and functions

Physician Relations – It’s Critical!

• Contract management system
• Payments to physicians
• Contracts for services
• Medical office space leases
• Payments from physicians
• Reconciliation
Physician Compliance Requires Documentation...

- Fair Market Value (FMV) – no “Enterprise Value” calculation
- Commercially Reasonable
- Authority to sign contracts, to commit hospital, to make payments to physicians
- Community needs assessments and independent third party valuations/appraisals

In Writing!

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<tr>
<th>Must have healthcare counsel review and approval</th>
<th>Must have documentation of FMV and community need</th>
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<tr>
<td>Must have valid, written, up-to-date, FMV contract in place that has been reviewed by healthcare counsel to pay physicians</td>
<td>A de minimis standard does not exist</td>
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How Quorum Helps Client Hospital Boards Become More Effective

- Compliance Support
- Education
- Operating Practices
- Health Finance & Reimbursement
- Interaction with Hospital Counsel
- Industry Alerts

Questions
Contact Us

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