

#### **HOW TO**

## ATTRACT, RETAIN, AND EQUIP BOARD MEMBERS TO DEAL WITH HIGH STAKES ISSUES

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## **HOSPITAL REVIEW**

### Hospital boards face turnover: 6 changes to note

Kelly Gooch - 2 days ago

This year has brought an exodus of board members from several hospitals. While each situation involves varying factors, they all come as the healthcare board's job gets more complicated amid shifting governance priorities and challenges.



#### AGENDA

- •Strategies to recruit and retain effective board members
- •Tactics to assist board members with difficult decisions and productive governance
- Confidentiality and board matters



# BOARD MEMBER RECRUITMENT

- Compensation?
- Health Insurance Benefits?
- Educational Retreats/Perks?
- Building a pipeline for future board members
- Community group to develop leadership skills of younger individuals



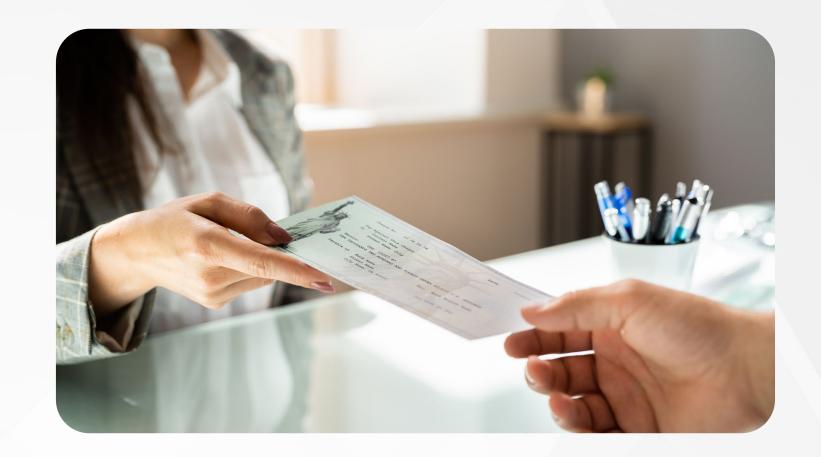




#### COMPENSATION

#### COUNTY HOSPITAL TRUSTEES

- County Board may establish a salary
- Between \$100 per year and \$100 per meeting of the Board, not to exceed \$1,200 per year
- Reimbursement for necessary mileage while on business of the facility or facilities.





#### NONPROFIT CONSIDERATIONS

- Nebraska law does not prohibit compensation of nonprofit board members
- Must maintain directors as independent
- Check organizational documents for restrictions

#### HEALTH INSURANCE BENEFITS

- Board members as common law employees
- Paid low monthly wage with all regular withholdings
- Modify health plan to include a specific board member employee class
- Board members eligible for health insurance at full cost premium
- Solution not available for 501(c)(3) organizations





#### COMPENSATION/BENEFITS

- Considerations and Risks
  - Multiple Employer Welfare Arrangement (MEWA)
  - Discrimination in favor of highly compensated individuals
  - Independence
  - Loss of certain legal protections



#### INDEPENDENT DIRECTORS

- IRS Form 990 inquires about the percentage of independent directors
  - Definition:
    - Not paid as employee or officer
    - Not more than \$10,000 as independent contractor
    - Nothing reportable on Schedule L (single transaction exceeding greater of \$10,000 or 1% of revenues, all transactions aggregate over \$100K, compensation to family member over \$10,000)



## NONPROFIT CORP STATUTORY PROTECTIONS

- Nebraska Statute § 25-21,190
  - Applies to director or officer of a nonprofit corporation who is not compensated for his or her service
  - Immune from civil liability for any act or omission which results in damage or injury
  - Limited to scope of his or her official functions and duties as a director or officer
  - Exception for willful or wanton act or omission
  - Compensation does not include reimbursement for expenses, receipt of meals at meetings or receipt of gifts not exceeding \$100 in any 12 consecutive months



# FEDERAL STATUTORY PROTECTIONS

- Federal Volunteer Protection Act of 1997
  - No liability for volunteer to governmental entity or section
     501(c)(3) entity within scope of responsibilities
  - Volunteer = serving without compensation or other benefit (<\$500 per year)</li>
  - Exception for willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the harmed individual



## EDUCATION RETREATS

#### Board retreat to warmer destinations?

 Travel for education of board permitted, with limits and considerations

#### Non - profit considerations

- Prohibition on use of public money for a private purpose
- Tax-exempt concepts (fair market value, private benefit and private inurement)



#### Local Government Miscellaneous Expenditures Act

- Unauthorized expenses No
- Spousal travel No
- Alcohol Maybe, if part of event if purpose and focus of event is consistent with Hospitals statutory purpose

Hospital/Board policy should spell out clearly

# RETAINING QUALITY BOARD MEMBERS

- Recruit the right skill sets and individuals from the start
- Enable with training and assessments
- Effective leadership (Chair)
- Plan for offboarding

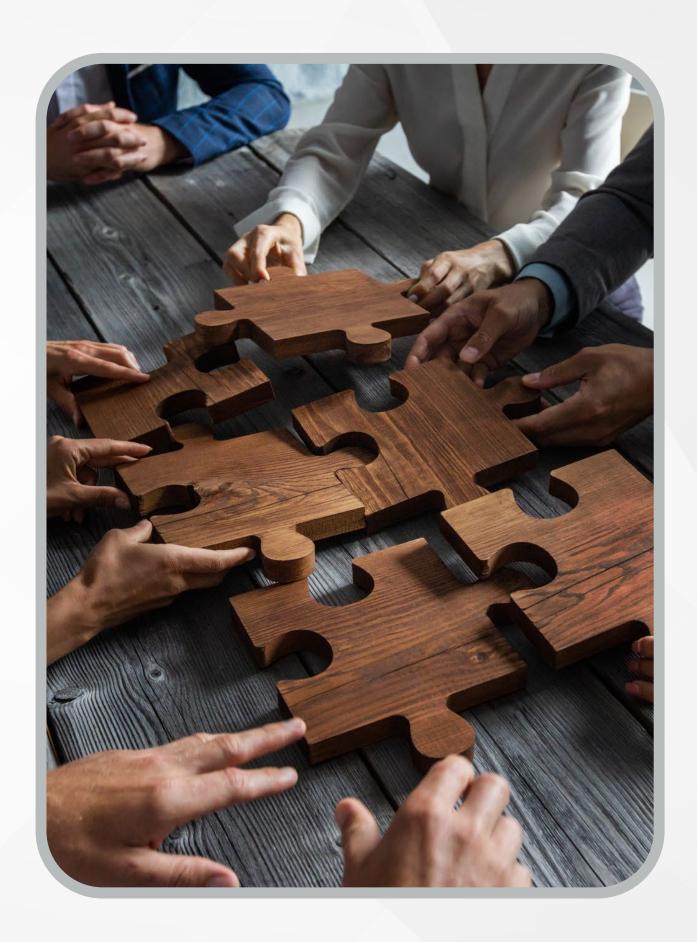




#### RECRUIT THE RIGHT PEOPLE

- Process must address increasing calls for inclusion of members representing multiple different skillsets and perspectives:
  - strategic experience
  - industry-specific experience
  - emerging competencies
  - past leadership roles
  - diverse backgrounds
- County hospitals provide appropriate input to County Board on these areas





#### PROVIDE EDUCATION

- Provide meaningful opportunities for Board education
- Thorough orientation for new board members
- Education of health care landscape, challenges and board responsibilities must be ongoing
  - Must be short & succinct to respect time
- Leadership education develop board leaders intentionally



#### PROVIDE EDUCATION

- Board education on responsibilities
  - Ensure members are familiar with industry vernacular and acronyms so they can understand management reports
  - Basic understanding of health care finance and reimbursement, but so much more...
  - Don't underestimate the learning curve
  - Encourage questions
  - Training on fiduciary responsibilities as board member
- Board calendar identifies responsibilities with deadlines
- Board Chair works with CEO to cover necessary ground within the Board's year

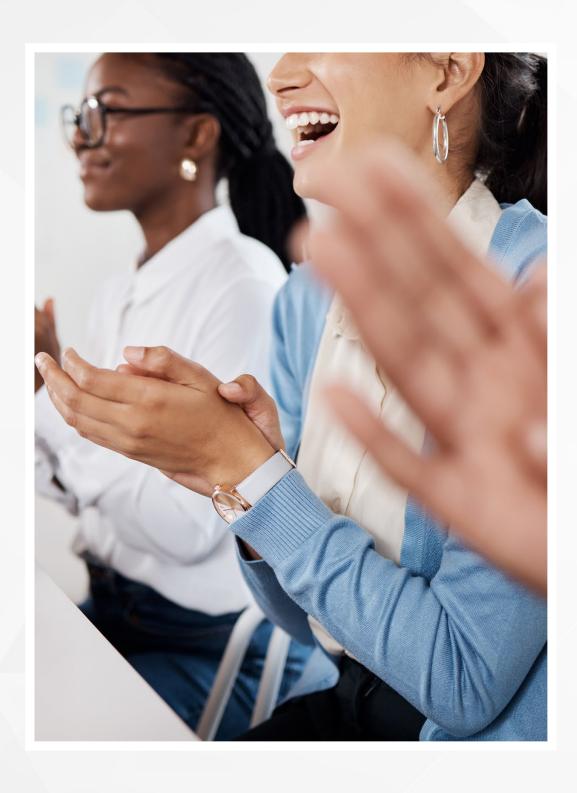


#### ASSESS PERFORMANCE

- Board Assessment
  - Periodic board self-assessment should keep board members accountable for their participation and contribution
    - Anonymous survey related to board's practices
      - Questionnaires
      - Compare responses and identify discrepancies
    - Interviews
      - Can elicit more valuable, detailed, and sensitive feedback
      - Trusted interviewer
  - Information shared with board without identification
  - Facilitate discussion regarding areas of improvement



## OPTIMAL TRUSTEE PERFORMANCE



- Represents community expectations

   while maintaining fiduciary
   responsibilities
- Brings expertise from business or other professional experience
- Participates actively in discussion
- Asks questions
- Uses emotional intelligence
- Encourages and supports execs and employees
- Lends moral and ethical fiber and direction
- Leads and educates others

#### PROMOTE FULL ENGAGEMENT

- Current pace of healthcare industry change requires thoroughly engaged members who are able to give their time and attention
- Qualification might look at a candidate's preexisting commitment of volunteer time and ability to meet the needs of the hospital board role
  - o Overboarding?



#### PROMOTE FULL ENGAGEMENT

- Make board's actions visible throughout the organization
- Ensure proper board culture
  - All voices heard
  - All opinions respected even if not in agreement
  - Confidentiality maintained
- Empower and prepare board to advocate on behalf of organization in community
- Support as much transparency of board activities as feasible while maintaining confidentiality



#### EFFECTIVE LEADERSHIP (CHAIR)

- Lead by example
- Counsel board members on the fringes
- Recognize value of maverick, however...
- Speak of balance of responsibilities vs. micromanagement
- Work with CEO to ensure board duties are covered and that board has a sense of direction
- Effective meeting management
   respect their time





### OFFBOARDING

- If attendance or performance of a board member is lacking, brings down morale and culture of board for all
- Offboarding strategies are becoming increasingly important
- Assessments help with the discussion
- Term limits for private hospitals allow for noncontroversial offboarding if participation is not optimal



# DIRECTORS' OVERSIGHT OF DISRUPTIVE FACTORS

- Board responsibility to plan strategically for both known and unknown situations (disruptive factors)
- Expect management to identify disruption threats and develop responsive strategies
- Board should expect that information related to business disruption is brought to the board's attention
- Consider making changes to board processes to better facilitate response plans



#### GOVERNING THROUGH DIFFICULT SITUATIONS



- Polarized community
- Rise in behavioral health needs
- Workforce shortages leading to culture concerns
- Shrinking budgets and resources
- Ever-present threat of cyber attack
- Unplanned crisis









#### TACTICS FOR BOARD

- Be informed on requirements and policy
- Publicly supportive of hospital at all times
- Refrain from micromanagement
- Prepare for and practice crisis response
- Act in best interest of hospital at all times
- Maintain confidentiality!



#### TRANSPARENCY VS. NEED FOR CONFIDENTIALITY

- Hospitals want their patients to feel some ownership in the hospital, which is encouraged by transparency
- However, many of the hospital's processes must be cloaked in confidentiality (protected health information, peer review reports, employee reviews and other information, etc.)
- No exception at board level





## PUBLIC HOSPITALS OPEN MEETING LAWS

- Only applicable to Governing Boards of public entities
  - County Hospital Board,
     District Hospital Board,
     Municipal Hospital Board
  - Private nonprofit Hospitals do not have to comply with the Open Meetings Act





# WHICH MEETINGS MUST BE IN PUBLIC?

- Quorum of the Board is present AND
- Hospital business is discussed
- Open Meetings requirements do not apply to chance meetings, attendance/travel to conventions or workshops, or social events



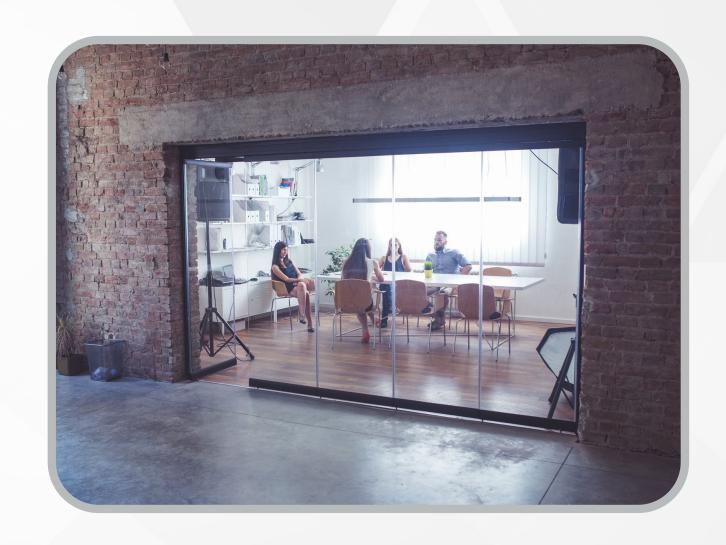
# WHAT DOCUMENTS NEED TO BE PROVIDED TO THE PUBLIC?

- Advance of and at the meeting:
  - Reasonable advance publicized notice of the time and place of each meeting
  - Agenda
  - At least one copy of all documents being considered at the meeting must be available at the site of the meeting
  - Copy of the Open Meetings Act
- After the meeting:
  - Meeting minutes and documentation received or disclosed in open session shall be public records and open to public inspection



### CLOSED SESSIONS

- Board can meet in closed session if necessary for:
  - The protection of the public interest
  - The prevention of needless injury to an individual, if such individual has not requested a public meeting





### REASONS FOR CLOSED SESSIONS

- Strategy session for collective bargaining, real estate purchases, pending litigation, imminent litigation
- Evaluation of job performance
- Special rules for public hospital governing boards:
  - Peer review activities
  - Professional review activities
  - Review and discussion of medical staff investigations or disciplinary actions
  - Strategy session concerning transactional negotiations with any referral source that is required by federal law to be conducted at arm's length



#### CONFIDENTIALITY CRITICAL

- If closed session was merited, discussions in closed session must be kept confidential
- Undermines effectiveness of board and leadership



### PUBLIC RECORDS ACT

- All records, including emails and text messages, unless an exception applies
- Exceptions
  - Medical records
  - Trade secrets (sometimes)
  - Attorney work product
  - Personal information regarding employees





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#### QUESTIONS?



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