



HOW TO

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

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# HOSPITAL REVIEW

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## 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.

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# AGENDA

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- 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

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- 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

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- 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)
  - 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

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## 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

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- 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

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- 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

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- 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

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# PROVIDE EDUCATION

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- 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

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- 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

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- 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 pre-existing commitment of volunteer time and ability to meet the needs of the hospital board role
  - Overboarding?

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# 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)

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- 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 non-controversial 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

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- Challenging regulatory climate
- 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

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- 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

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- 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





## QUESTIONS?

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THANK YOU

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