

PROJECTED GOVERNANCE TRENDS FOR NONPROFIT HOSPITALS AND HEALTH SYSTEMS

A review of current developments has led me to the following perspective on governance trends for 2015:

1. **ASSURING BUSINESS JUDGMENT RULE PROTECTION:** As the dimensions of board service increase, the availability of business judgment rule protection takes on added significance. Yet, in the current regulatory/litigation environment, the availability of the rule cannot be assumed. The board's approach to decision-making must become more sophisticated in order to better assure the sustainability of those decisions, and reduce the board's liability profile.
2. **RISK OVERSIGHT:** The sharpened regulatory enforcement environment and the intricacies of corporate strategic initiatives combine to place new pressures on the board's risk oversight responsibilities. The proper exercise of those responsibilities may require a more focused board oversight template. The board must be proactive in assuring that organizational-appropriate risk identification, management and reporting protocols are in place.
3. **DIRECTOR TIME COMMITMENT:** Directors should expect to devote substantially more time to governance matters, given the greater complexity of board agendas. A leading survey shows the annual time commitment of directors rising 13% since 2013 (to 278 hours)—not counting time spent on informal intra-board discussions and crisis management issues. Support may come from greater agenda management and effective committee use.
4. **STRATEGIC PLANNING:** The changing competitive and financial landscape will place greater importance on board contribution towards the strategic vision. There will be an expectation of greater board involvement in, and accountability for, the strategic planning process. Board engagement on strategy will evolve towards the continuous and away from the episodic. Strategic issues should appear frequently on the board agenda.
5. **BOARD COMPOSITION:** The board nominating process will take on added importance, with particular focus on composition and effectiveness-related issues. Primary among these is a competency-based selection process identifying candidates with expertise needed to monitor an increasingly diverse operational portfolio. Also important will be accommodating gender and other diversity factors; and addressing concerns with "overboarding", and outside business interests.
6. **COMMITTEE EFFECTIVENESS:** The board's ability to conduct its affairs will increasingly depend upon the effective use of committees. This can be manifested through the following: composition of a majority of independent members; appointing members with demonstrated competencies; allocating both workload—and knowledge—across committees; assuring proper horizontal and vertical communication; and establishing appropriate meeting frequency.
7. **TALENT DEVELOPMENT:** Issues of executive talent management will emerge as an important governance role. CEO and executive leadership succession planning should be the subject of increased board attention. Non-CEO members of the executive leadership team, and their respective credentials, must receive greater exposure to the board. The compensation committee agenda should address the recruitment, retention and development of executive talent, beyond that of the CEO.
8. **CYBERSECURITY AND GOVERNANCE:** Health system boards should embrace emerging "best practices" for governance oversight of cybersecurity issues. These recognize the growing legal and reputational risks arising from the breach of patient health information. Formal governance practices should address matters of privacy and information technology/security, internal responsibility for cyber preparedness, recruitment of directors with cybersecurity experience, and management reports on cybersecurity matters.
9. **TENURE REFRESHMENT:** Increasing emphasis on governance effectiveness should prompt health system boards to address the appropriateness of director "refreshment" policies. These might include term limits, a mandatory retirement age and similar mechanisms. Concerns with director entrenchment should be balanced against standards of director experience and performance. The lack of any recognized "best practices" should not prevent boards from conducting this dialogue.
10. **GC/CCO COORDINATION:** A series of developments threaten to blur the important distinction between the system's legal and compliance functions. If left unaddressed, it could lead to significant organizational risk; e.g., tasking compliance officers to perform legal functions and loss of the attorney-client privilege. The board should address this risk by requiring clarity between the roles of general counsel and compliance officer.