

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 2014:

- 1. STANDARD OF CARE:** The fiduciary standard of care as applied to health system directors by courts and by regulators will become more rigorous as the scope of operations, and the value of charitable assets under control, increase. A premium will be placed on both effective management support of the board in the exercise of its duties, and greater board awareness of the responsibilities of management.
- 2. LEVEL OF ENGAGEMENT:** The forces sparking the consolidation of the health care sector are creating board agendas of unprecedented complexity and challenge. This, in turn, will require an increased level of boardmember engagement in terms of time commitment, level of attentiveness, and constructive scrutiny. Governance efficiency measures (e.g., agenda management from the Chair, increased reliance on committees; greater use of board-focused technology) will assume heightened importance.
- 3. STRATEGIC PLANNING:** Active board participation in the development, implementation and periodic modification of a comprehensive system strategic plan — that addresses evolving market dynamics — will be a key fiduciary responsibility. Special attention will be expected on the challenges and complications arising from the “rollout” of the Affordable Care Act — and their implications to the marketplace in general, and to the health system in particular.
- 4. BOARD COMPOSITION:** New challenges will confront the director nomination process. A substantial effort will be placed on selecting directors with the competencies necessary to address emerging operational needs (e.g., quality, information technology, insurance, population health). “Prestige” appointments will lose favor, and “fitness to serve” requirements will gain in popularity. Identifying qualified members for key committees will assume ‘priority’ status.
- 5. COMPLIANCE OVERSIGHT:** The *Tuomey* decision, increased whistleblower activity, the vagaries of the Stark law and increased anti-fraud enforcement will combine to require vigorous and comprehensive board compliance oversight. Special emphasis will be placed on the board’s informed appreciation of the legal and reputational risks associated with particular transactions and arrangements.
- 6. RISK REPORTING:** The board and management will be expected to work together to develop an effective mechanism by which risks that “keep management awake at night” are promptly communicated to the board, in appropriate format and context. Board-driven corporate culture must encourage management to report “bad news” to the board. Traditional communication practices and reporting relationships should be re-evaluated for effectiveness.
- 7. GOVERNANCE STRUCTURES:** The seismic reconfiguration of the health care industry will prompt health system boards to evaluate the long term effectiveness of current governance structures. Emphasis would be on board size, composition, committee structure, reporting relationships and reserved powers. Efforts to “streamline” governance obligations must be balanced against increased expectations of board engagement.
- 8. HEIGHTENED INVOLVEMENT:** Leadership should be attentive to those business initiatives and corporate challenges — so critical to organizational success, reputation and risk profile — that require complete board “ownership”. These are initiatives and challenges for which the organizational response cannot be fully, and fairly, delegated to executive management but which require extraordinary board involvement.
- 9. CONFLICTS AWARENESS:** Individual directors — and the board as a whole — must be sensitive to the potential that actual or potential conflicts may arise from sources far broader than the traditional “financial relationships” context. Particular attentiveness should be on conflict risks arising from new forms of health system business initiatives, and from shared business, social, familial and civic relationships between boardmembers.
- 10. THE GENERAL COUNSEL’S ROLE:** The board must work in concert with the CEO to acknowledge the increasing professional ethics challenges inherent in the general counsel’s role as both “guardian” of the system’s legal and reputational profile, and as an important business “partner” to management. This is especially important as the system pursues a new, diversified business portfolio with unique legal implications.