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## Welcome to The Governance Institute's E-Briefings!

This newsletter is designed to inform you about new research and expert opinions in the area of hospital and health system governance, as well as to update you on services and events at The Governance Institute. Please note that you are receiving this newsletter because you are a Governance Institute member or expressed interest at one of our conferences.

### Terms of Engagement: Board/Executive Collaboration on Public Health Crises

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*This is the fifth article in a series examining governance tasks that may now require a heightened level of attentiveness.*

The current Ebola epidemic challenges healthcare boards to articulate their most appropriate role with respect to the organization's response to a public health emergency. Such circumstances present extraordinary threats to the public, patients, the medical/nursing staff, and employees—and to the hospital or health system's finances and reputation. They present critical issues with respect to the organization's preparedness on multiple levels to respond to extraordinary clinical, operational, legal/regulatory/liability, and media pressures. All of this will be complicated by intense public attention from the media, the public, and federal and state elected officials and regulators. The board will be expected—and will want—to play a significant role in directing the organizational response.

Yet traditional expectations of governance conduct and competency don't fit neatly within the context of Ebola-type events. Public health crises transcend issues presented by significant, "bet the farm" transactional and regulatory matters that infrequently but methodically appear on the boardroom agenda. A public health crisis generates complex issues of clinical care, infectious disease, contagion protocol, and medical research, as opposed to more familiar matters of business, finance, and law. The expertise necessary to respond to the former scenario is less likely to be found in the boardroom than with the latter scenario. In the absence of a formal plan of guidance and engagement, board members may quickly grow frustrated by the inherent limitations

on their ability to provide informed oversight. Thus, the board's ability to effectively engage will be dependent in large part on close collaboration with, and acute reliance on, senior executive staff and medical and nursing staff leadership, and a more acute awareness of the related role of government.

The guidance necessary to define governance's proper role in a public health crisis can be developed in large part through education, focused on what experience suggests are the most prominent elements of an effective hospital/health system response to a public health crisis. To be effective, that education will identify matters that are appropriately the focus of direct board oversight and direction, and those for which the board must be particularly reliant on the advice of clinical leadership—and perhaps government mandate.

#### Fundamental Crisis Response Guidelines

##### **Focus on safety, consistency, and risk**

**reduction.** The diverse safety concerns raised by public health crises demand close coordination between all key management and staff levels (e.g., infectious disease, emergency medicine, physician leadership, nursing leadership, emergency management/incident command/security, physical plant, clinical engineering, supply chain, hospital administration, physician practice administration, communications, human resources, risk management, and legal). Leadership will recognize that there will be multiple internal constituencies

with a strong interest in safety and risk reduction issues. A central working group structure with clear lines of reporting will be critical; in the academic setting, it will also be important to include university leadership as part of the working team, and to be attentive to issues of student safety.

**Importance of policies, procedures, protocols, and processes.** It will be essential for leadership to work with public health authorities and incorporate their guidance regarding clinical protocols, coordination of expectations for service delivery, lab testing capabilities, emergency powers such as isolation and quarantine, and the like. In that regard, leadership will want to consider CDC, CMS, state law, and any accrediting body guidance or requirements in development of or when revising policies and procedures. The management team will want to work proactively with medical staff leaders to develop a highly detailed protocol for care, recognizing that this may need to be adapted as additional information regarding the health crisis becomes known.

The leadership team also must recognize that government guidance may evolve as circumstances change, as has been the case, for example, with federal and state standards related to mandatory quarantine for certain travelers and healthcare workers. This potential for change underscores the need for the adaptability of institution plans, as well as internal and external communication that is timely, clear, objective, and reassuring.

**Intensive training, retraining, and auditing.** Leadership will also want to develop immediate clinical training sessions for healthcare workers. This would commence with the core workers inevitably to be involved, and move outward from that point. It will be important to internally publicize the training protocol to provide workers with a sense of organizational direction, and to allay concerns. Frequent audits and retraining will help to keep staff on point. Also important will be immediate leadership intervention when any lapse in policy, procedure, or process is identified, and to share lessons learned.

**Leadership/employee/staff matters.** An effective crisis response plan will incorporate leadership levels of interaction, coordination, communication, and concern with employees and medical/nursing staff on multiple levels. It is very important for senior executive and medical staff leadership to assume a coordinating role early in any crisis response effort, and to communicate with employees and staff early and proactively. It is

essential that the hospital's response focus on the best available clinical and epidemiological information. While administration and executive leadership must exercise judgment on critical issues, their judgment should be informed by the subject matter experts.

Effective leadership will deal with concerns of staff. In that regard, preparations should be made with respect to possible worker refusal to engage, likely worker anxiety regarding the infectious disease itself, or conditions imposed for engagement (e.g., use of post-exposure quarantines).

**Determine what the facility can and cannot handle.** Practicality commends a SWOT analysis (evaluating strengths, weaknesses, opportunities, and threats) of both physical and human resources. This could be supplemented by a process of confirming and documenting facility capabilities to help guide patient care and potential transport if a suspected case is identified in the facility or another facility nearby. In the context of the Ebola crisis, relevant questions might include the mechanics of transferring potential or confirmed Ebola patients to a CDC-designated treating hospital nearby.

It is also important to understand that in the unique context of a public health crisis, more than the ordinary degree of inter-facility cooperation and collaboration may occur. This may take the form of intensive information sharing around best practices, supply and equipment availability, staffing availability, and government guidance; collective training; the transfer arrangements discussed above; and inter-institutional treatment teams. The emergency nature of a public health crisis gives broader than usual latitude in this collaboration. It is important, however, that leadership remember that legal, compliance, liability, and cost issues will dictate in favor of involvement by legal counsel, finance, and medical staff leadership in connection with these collaborative initiatives.

**Communication is key.** Extra effort should be made by leadership to have a health crisis-specific communication plan. This would include clarity on identifying an organizational spokesperson and what is to be shared with the media. It will be imperative to communicate (to *all* constituencies) the realities of the disease, the current state of the institution's readiness, and how the institution intends to proceed. To the extent possible, the communication plan should be coordinated with public health agencies and other healthcare providers.

**Remember that existing laws and regulations apply.** Leadership must recognize that there is a direct legal component to an effective organizational response to a public health crisis. Most relevant may be compliance with the Emergency Medical Treatment and Labor Act (EMTALA). This federal law requires that participating hospitals and health systems provide a medical screening examination to determine the presence or absence of an emergency medical condition to all individuals who present for care. This obligation is not abrogated by the suspicion of or known diagnosis of Ebola or any other medical condition, and the risk of misdiagnosis of a disease that in many ways mimics others is a prevailing risk. Matters of Informed consent are implicated where patients are recommended to receive experimental medications not yet approved for use by the FDA, or plasma or blood transfusions from individuals who have recovered from Ebola.

Also relevant are state and federal laws regarding confidentiality and privacy, including HIPAA, which remain in full force for covered entities in the context of a public health crisis. Any response preparation process should incorporate refresher education on the need to maintain patient confidentiality—even where the matter is of national or even international interest.

Public health law related to infection control, including monitoring, isolation, and quarantine, may also come into play in a public health crisis. This area of law is relatively unfamiliar to many and, as seen with Ebola, application of the law may shift as circumstances change.

## Implications for Governance

The law has no clear template for what may constitute effective oversight in a public health crisis; an effective board response will depend upon the critical circumstances. While the board may include medical competencies, and members with experience in crisis management, its oversight and related decisions will incorporate an unusually high degree of reliance on experienced clinical and executive leadership. The board should be

proactive in obtaining general advice and direction in advance of any public health crisis.

Given that perspective, the board should be advised by the CEO as to the plans, issues, and challenges associated with the particular crisis. The board should be interested in the level of preparedness, the extent of internal cooperation, and the potential reputational, legal, and financial exposure to the institution attendant to the particular crisis and the risks of inadequate preparedness. However, the board also should understand that hospitals will be required to respond as circumstances warrant, and therefore there is an inherent uncertainty and risk to the circumstances that cannot be entirely avoided. The audit committee and other key board committees should guide executive leadership to consider strategies that would involve risk management, insurance coverage, and contractual protections. Whichever committee has responsibility for legal and compliance matters should help ensure that the legal implications associated with crisis response are being adequately addressed.

A pre-prepared “dashboard” of sorts, identifying basic principles of public health crisis response, may also help the board exercise its oversight duties. The dashboard could identify the types of fundamental measures that executive and clinical leadership recognize as critical to the organizational response—thus providing the board with some framework from which it could evaluate the actual organizational response.

In the context of the typical continuum of oversight conduct, proper board response to a public health crisis falls closer to the “follow leadership’s direction” than it does to “hands on presence in the C-suite.” The ability of the board to exercise close oversight in a public health crisis will be limited by its unfamiliarity with the clinical complexities. That will not prevent the board from developing a preparedness plan, becoming informed through reasonable reliance on the experts, and becoming more directly involved when the circumstances warrant. The successful organizational response to a public health crisis will be dependent upon judicious oversight by a properly informed board.

*The Governance Institute thanks Michael W. Peregrine, Esq., Partner, and Sandra M. DiVarco, Esq., Partner, McDermott Will & Emery, LLP, and Anne M. Murphy, Senior Vice President, Legal Affairs and General Counsel, Rush University Medical Center, for contributing this article. They can be reached at [mperegrine@mwe.com](mailto:mperegrine@mwe.com), [sdivarco@mwe.com](mailto:sdivarco@mwe.com), and [Anne\\_Murphy@rush.edu](mailto:Anne_Murphy@rush.edu).*