# A Framework for Effective Governance

*By Roger W. Witalis, FACHE, Witalis & Company, Inc.*

Over the past 30 years, the healthcare industry has been in a constant state of change. Whether it's episodic care or managed care, fee-for-service or capitation, pay-for-volume or pay-for-performance, standalone or system alignment, physicians as competitors or partners, nothing seems as it was or soon will be. Or is it? Fortunately, the framework for effective governance has not changed.

In my capacity as a governance advisor of The Governance Institute, I have been privileged to experience, formulate, learn, and teach what The Governance Institute believes are "best practices" of not-for-profit hospital and health system governance. These practices were originally described by The Governance Institute's founder, Charles Ewell, Ph.D., in *Really Governing*.[1] These governance practices provide a clear, precise, and shared framework for the type of work boards should be doing to effectively govern their organizations. This framework is consistently applied by The Governance Institute through its conferences, biennial survey of hospital and healthcare systems, the BoardCompass® board self-assessment tool and process, and other publications, research, and reference materials. Hundreds of boards and thousands of board members have been educated, oriented, and reoriented to this recommended governing framework and applied its principles to address the most daunting industry challenges.

New board members can be quickly overwhelmed by the complexities of the changing healthcare world. The governing framework offers a tool to place the changes in perspective and deal with them with confidence. This framework was most recently summarized in the 2011 biennial survey, *Dynamic Governance: An Analysis of Board Structure and Practices in a Shifting Industry*.[2] *Dynamic Governance* defines the not-for-profit hospital and health system board's collective duties, roles, and core responsibilities of the governing framework. The board's fiduciary duties are:

- **Duty of care:** The duty of care requires board members to have knowledge of all reasonably available and pertinent information before taking action. Directors must act in good faith, with the care of an ordinarily prudent person in similar circumstances, and in a manner he or she reasonably believes is in the best interest of the organization.
- **Duty of loyalty:** The duty of loyalty requires board members to discharge their duties unselfishly in a manner designed to benefit only the corporate enterprise and not board members personally. It incorporates the duty to disclose situations that may present a potential for conflict with the corporation's mission, as well as protection of confidential information.
- **Duty of obedience:** The duty of obedience requires board members to ensure that the organization's decisions and activities adhere to its fundamental corporate purpose and charitable mission as stated in its articles of incorporation and bylaws and other binding corporate documents.

These duties cannot be assessed or applied in isolation. Rather, all three are interrelated and collectively inform what is appropriate governance practice for any given board. Of particular relevance to not-for-profit, multi-hospital systems is the duty of obedience. This is because multi-hospital systems have both local and/or regional and system/corporate-level governance structures. In order for the different levels of governance to operate effectively, and not to work at cross-purposes, board members at each level must understand and adhere to the duties and responsibilities delegated to their level by the system's governing articles, bylaws, and other documents. In other words, the duty of obedience informs the scope of the duty of care and the duty of loyalty. While all board members have a duty of care and a duty of loyalty to the particular organization they serve, in fulfilling those duties they must act in accordance with their duty of obedience to the organization's specific purposes, bylaws, and binding commitments, and the purposes and structure of the overall system of which the organization is a part. For system-level officers and directors, this means acting in according with the system's articles and bylaws, and in the system's best interests, as defined and informed by those articles and bylaws.

The board's core responsibilities are:

- **Quality oversight:** Boards have a legal, ethical, and moral obligation to keep patients safe and to ensure they receive the highest quality of care.
- **Financial oversight:** Boards must protect and enhance their organization's financial resources, and must ensure that these resources are used for legitimate purposes and in legitimate ways.
- **Strategic direction:** Boards are responsible for envisioning and formulating organizational direction by confirming the organization's mission, articulating a vision, and specifying goals that result in progress toward the organization's vision.
- **Board development:** Boards must assume responsibility for effective and efficient performance through ongoing board development, discipline, and attention to improvement.
- **Management oversight:** Boards are responsible for ensuring high levels of executive management performance and consistent, continuous leadership.
- **Community benefit and advocacy:** Boards must engage in a full range of efforts to reinforce the organization's grounding in their communities and must strive to truly understand and meet community needs.

The Governance Institute's governance framework also seeks to draw clear lines between governance and management. The Governance Institute defines the "role of governance" as the process of exercising accountability by setting policy, making decisions, and overseeing implementation:

- **Setting policy:** Approving statements of intent to guide and constrain subsequent decision making and limit choices. Policy statements may include definitions of core duties and responsibilities, statements of intended direction, or statements of expectation. They can be prescriptive or prohibitive.

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1 Charles M. Ewell and Denise D. Pointer, *Really Governing: How Health System and Hospital Boards Can Make More of a Difference* (New York: Delmar Publishers, 1995).

2 Kathryn C. Peisert, *Dynamic Governance: An Analysis of Board Structure and Practices in a Shifting Industry,* 2011 Biennial Survey of Hospitals and Healthcare Systems, The Governance Institute.

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- **Decision making:** Making ultimate choices and reaching agreements within the context of approved policy. The board may retain full decision-making authority or delegate authority, with limits, for the preparation of recommendations to the board.
- **Oversight:** Ensuring that tasks and authority are being executed in ways that meet board expectations as expressed in its policies and decisions. Oversight provides monitoring, assessment and feedback, and provides the context for corrective action.

The "role of management," on the other hand, is to deliver results by implementing policy and decisions as set forth by the governing board, managing operations, and reporting on performance. Boards need to be continually reminded of the distinction between governance and management to avoid the tendency to micromanage and "meddle" in operations.

### Applying the Framework

As an advisor I am often asked to discuss the latest trends in governance, such as implications of health reform on governance. As we now know, aspects of health reform deal with nearly all the pieces of the framework. The "work" of the board, however, is not affected. The governance framework provides the foundation upon which boards can define their role and responsibility given any new issue or challenge. Upon further inquiry it becomes clear that the impetus for this discussion is really not a trend in governance but an aspect of a fiduciary duty such as "conflict of interest" or "independence," or an aspect of a core responsibility such as "pay-for-performance" (finance/quality) or "executive compensation" (management/duty of loyalty). Organizational structures may change, policies may have to be established or modified, new decisions will need to be made, and oversight strengthened. The "work" of the board, however, is not affected. The framework stays intact and organizations are governed effectively.

*The Governance Institute thanks Roger W. Witalis, FACHE, president of WITALIS & Company, Inc. and Governance Institute advisor, for contributing this article. He can be reached at rwitalis@gmail.com.*