

Elements of GOVERNANCE®

Providing CEOs, board chairs, directors, and support staff with the fundamentals of healthcare governance

A SERIES BY THE GOVERNANCE INSTITUTE

GOVERNANCE SUPPORT

A BEHIND THE SCENES GUIDE TO ENSURE YOUR BOARD IS PREPARED
SECOND EDITION



A SERVICE OF

nrc
HEALTH

The Governance Institute®

The essential resource for governance knowledge and solutions®

9685 Via Excelencia • Suite 100 • San Diego, CA 92126

Toll Free (877) 712-8778 • Fax (858) 909-0813

GovernanceInstitute.com

Elements of GOVERNANCE

A SERIES BY THE GOVERNANCE INSTITUTE

Elements of Governance® is designed to provide CEOs, board chairs, directors, and support staff with the fundamentals of not-for-profit governance. These comprehensive and concise governance guides offer quick answers, guidelines, and templates that can be adapted to meet your board's individual needs. Whether you are a new or experienced leader, the *Elements of Governance*® series will help supply you and your board with a solid foundation for quality board work.

The Governance Institute

The Governance Institute provides trusted, independent information, resources, tools, and solutions to board members, healthcare executives, and physician leaders in support of their efforts to lead and govern their organizations.

The Governance Institute is a membership organization serving not-for-profit hospital and health system boards of directors, executives, and physician leadership. Membership services are provided through research and publications, conferences, and advisory services. In addition to its membership services, The Governance Institute conducts research studies, tracks healthcare industry trends, and showcases governance practices of leading healthcare boards across the country.





The Governance Institute®

The essential resource for governance knowledge and solutions

9685 Via Excelencia • Suite 100 • San Diego, CA 92126

Toll Free (877) 712-8778 • Fax (858) 909-0813

 /GovernanceInstitute.com

 /TheGovernanceInstitute

 /thegovinstitute



Jona Raasch Chief Executive Officer

Regan Murphy General Manager

Cynthia Ballow Vice President, Operations

Kathryn C. Peisert Managing Editor

Glenn Kramer Creative Director

Kayla Wagner Editor

Aliya Garza Assistant Editor



The Governance Institute is a service of NRC Health. Leading in the field of healthcare governance since 1986, The Governance Institute provides education and information services to hospital and health system boards of directors across the country. For more information about our services, please call toll free at (877) 712-8778, or visit our Web site at GovernanceInstitute.com.

The Governance Institute endeavors to ensure the accuracy of the information it provides to its members. This publication contains data obtained from multiple sources, and The Governance Institute cannot guarantee the accuracy of the information or its analysis in all cases. The Governance Institute is not involved in representation of clinical, legal, accounting, or other professional services. Its publications should not be construed as professional advice based on any specific set of facts or circumstances. Ideas or opinions expressed remain the responsibility of the named author(s). In regards to matters that involve clinical practice and direct patient treatment, members are advised to consult with their medical staffs and senior management, or other appropriate professionals, prior to implementing any changes based on this publication. The Governance Institute is not responsible for any claims or losses that may arise from any errors or omissions in our publications whether caused by The Governance Institute or its sources.

©2017 The Governance Institute. All rights reserved. Reproduction of this publication in whole or part is expressly forbidden without prior written consent.

Table of Contents

1	Introduction
2	Governance Support Responsibilities
2	Board Meetings
8	Board Reference Manual: Things to Include
8	Board-Related Correspondence and Files
9	Board Member Orientation and Continuing Education
10	Board Committees
11	Board Self-Assessment & Development
11	Resource and Other Support Activities
13	Conclusion
14	Glossary of Terms
18	References

Introduction

Governance support professionals dedicate themselves to promoting excellence, accountability, and innovation. They are expected to assist the board in completing their work as effectively and efficiently as possible, according to policies, goals, and strategic plans of the organization. This includes scheduling, recordkeeping, updating bylaws, coordination of trustee orientation and continuing education, performance evaluation, and regulatory survey preparation, along with additional support activities as requested by the board.

One primary challenge for governance support staff is that each organization has different needs and expectations for governance support. Providing a standard governance support manual would inevitably exclude some organizations and threaten to stifle ingenuity of those that have found alternative means of doing their work effectively. Thus, we submit elements, not rules, of governance that might aid you as you lend aid to board effectiveness—a comprehensive collection of practices for those providing governance support.

Look for the following additional information and samples related to this publication in the electronic version, available at GovernanceInstitute.com/templates:

1. Sample Job Description: Governance Support Person/Board Coordinator
2. Sample Job Description: Chief Executive Officer
3. Sample Job Description: Board Chairperson
4. Sample Job Description: Individual Board Member
5. Sample Job Description: Freestanding Hospital Board
6. Sample Curriculum/Structure of an Orientation Program
7. Sample Board Committee Membership Matrix
8. Sample Meeting Agenda
9. Sample Policy: Responding to Public Records Request

Governance Support Responsibilities

Board Meetings

Board meetings are at the center of governance and the way they are planned and conducted significantly influences the quality of governance. It is essential that board meetings are effective and create an environment that allows board members to fulfill their fiduciary duties and core responsibilities on behalf of the organization. Board meetings need to optimize the time, talents, skill sets, and resources of board members, individually and collectively, for the benefit of the organization, its mission, and the communities it serves. Thus, the governance support person's first and foremost responsibility is to assist in preparing effective board and committee meetings, through facilitation and coordination of the following:

- Provide adequate notice of the meeting, and appropriate email or telephone reminder a day or two in advance. Include relevant information regarding location and parking if applicable.
- Submit the agenda and background material at least a week in advance of the meeting to allow board members sufficient time to prepare. The board packet should include key contact information, the board calendar, meeting agendas, meeting minutes, pre-meeting individual preparation (including relevant publications/news articles), and so forth.
- Maintain a calendar of meeting schedules to facilitate the board's conduct of business.
- Reserve the meeting room and ensure it is prepared (projectors and other appropriate media equipment available and in working order) and other amenities are seen to. Pay careful attention to the physical arrangements. Make it comfortable, convenient, and see that it provides for maximum involvement (e.g., seating, room temperature, refreshments). Check the meeting room well in advance.
- Pay attention to niceties—for example, large name cards placed in front of each person, along with notepads and pens. Send the committee list with each agenda. Include first names and nicknames (if appropriate).
- Attend board/committee meetings, take minutes, and keep an accurate record of the business conducted.
- Make preparations for and assist management in organizing conferences, retreats, and other pertinent meetings for board members.
- Initiate appropriate follow-up on board or committee actions and prepare appropriate correspondence resulting from board/committee actions.
- Keep the group informed between meetings. Send meeting minutes out in a timely manner after board meetings.

The Agenda

The meeting agenda is a carefully constructed plan for making the best use of board members' time. Defining the process and carrying it out in an effective and efficient manner is critical, and requires a systematic and disciplined approach.

The governance support person should facilitate creation of the meeting agenda and assist the board chair in developing the agenda. Helpful tasks include:

- Keep a record of any follow-up items from previous meetings that need to be added to the agenda.
- Identify individuals responsible for each agenda item.
- Identify items requiring a decision, and make related documents (such as policies, procedures, etc.) available for review in the board packet or on the board's intranet.
- Provide management with a calendar reflecting when agenda items and supporting materials are due in order to meet the distribution deadline.
- Consider using an annotated agenda for the board chair with reminders such as conflict of interest, recognition, upcoming events, etc.

The selection of agenda items should be driven solely by what the board must address in order to fulfill its ultimate responsibilities and to execute its core roles. These items do not magically appear; they originate from three specific categories: routine, scheduled, and emergent:

1. *Routine items:* Those that appear on the agenda at every meeting and require little, if any, board action. Approving minutes of the previous meeting and receiving the report of the board chairperson and CEO are examples.
2. *Scheduled items:* Those that can be anticipated because of the nature of recurring work performed by the board and its standing committees. They require board policy formulation, decision making, or oversight activity, and are anticipated. Typically, these correspond to topics and timeframes from the board's "annual agenda"—a framework and/or document developed by the full board, a committee, the board chair, and/or the CEO for the upcoming year. They may appear on every meeting's agenda or be scheduled for only once a year, but in all instances they are predictable. Examples include:
 - Appointing, reappointing, and determining the privileges of medical staff members.
 - Reviewing quality, utilization, and risk indicators.
 - Assessing the performance of the CEO.
 - Evaluating progress against a specified set of benchmarks (e.g., from the strategic plan).
 - Establishing financial objectives for the coming year.
 - Reviewing and acting upon the report of the external auditors.

3. *Emergent items*: Items that require board policy formulation, decision making, or oversight activity, but are not anticipated. Examples include an unexpected CEO resignation, the external audit uncovering irregularities, and other unanticipated strategic opportunities that surface (e.g., desired property comes on the market, target medical group seeks alignment, affiliation/acquisition request from an interested organization).

For *scheduled* items, the following detail represents a standard plan for incorporating these items into the board agenda:

- Standing committees prepare a work schedule listing the recurring tasks it must perform, and when items will be forwarded to the board for deliberation and action.
- A master board calendar is then created. It specifies, for each meeting, both the scheduled items and an estimation of the time each item will consume.
- Using the master board calendar, the board chair, in partnership with the CEO, sets the final agenda and, in addition, also includes other routine business and any emergent items.
- Following this system helps boards avoid setting agendas meeting by meeting, and also ensures that meetings will produce results rather than seemingly endless discussions of lesser issues.

Even with a rational system for planning and setting the agenda, sometimes agenda items mushroom, almost out of control. In order to keep it manageable, the board must abide by a few general rules for its meetings. For example, it should:

- Adopt a board schedule for the year. The schedule outlines the board's plans and actions for the year, and these form a basis for board meeting agendas.
- Empower the chair to work on meeting details. The annual agenda/schedule forces the chair to honor the board's plan; the chair is responsible for the details.
- Review performance objectives annually. The board should go over its responsibilities and establish doable, yet meaningful objectives to which it can commit itself.

Meeting Minutes¹

Whether considered an "art" or a "science," a premium is attributed to effective minute taking for meetings of corporate boards and their committees. The development of an accessible, accurate, and well-prepared meeting record is essential to efficiently establishing the good faith exercise by officers and directors of their fiduciary duties. This is particularly the case with respect to the demonstration of attentiveness, diligence, and judgment in connection with both decision making and oversight. The written boardroom record is a critical concern given the intense regulatory and litigious environment that exists in the healthcare industry, and the increasing focus on officer and director accountability.

¹ This section on meeting minutes has been adapted from Michael W. Peregrine, "Corporate Minute-Taking: A General Counsel's Guide," *Health Lawyers News*, January 2006 and updated with information from Mr. Peregrine's Governance Notes article, "The Basic Principles of Corporate Minute Taking," The Governance Institute, August 2015.

There is no accepted best practice when it comes to the style and preparation of board and committee minutes—no “one size fits all” approach. The fundamental role of corporate minutes is to preserve an accurate and official record of governance proceedings. Ultimately, meeting documentation should reflect a balance between a) the unique boardroom culture of a particular organization and b) an awareness of how a thoughtfully prepared record can support the sustainability of board decisions, and reduce the potential legal exposure of officers and directors. The organization’s general counsel should play a leading role in guiding the style of minute taking to be adopted by the board and its committees.

Regardless of the subject matter discussed at a meeting, certain fundamental matters should always be reflected in the minutes:

1. The meeting date, time, duration, and location
2. The nature of the meeting (regular or special)
3. A list of participants, separating officers and directors from invited staff, advisors, and guests, and those absent
4. Presence (or lack of presence) of a quorum
5. The names of all individuals making specific presentations
6. A list of all material distributed at the meeting
7. The general items of discussion, which may be satisfied by attaching a copy of the agenda and noting any deviation from it
8. Confirmation of all action taken, including adoption of resolutions

Length of Minutes: While the fundamental purposes of minute taking can be achieved by a “minimalist” approach, greater benefits are likely to be achieved by means of detail and elaboration. This does not mean minutes should be a “virtual transcript,” but a detailed approach is more likely to establish the prudence and clarity of the decision-making process. The very meaning of “minutes” infers a document that is a summarized record of actual events. A willingness to be expansive allows the scrivener to better reflect both the “flow” and “spirit” of the meeting, spending appropriate time describing the discussion of more significant agenda items.

Reflecting Business Judgment: Demonstrate compliance with fiduciary obligations within the minutes by incorporating: 1) the substance and tenor of the deliberations, 2) an identification of the general amount of time spent on a particular issue in order to reflect the related level of attention provided by the board, 3) a recitation of the material presented to the board for its review, and 4) confirmation (where accurate) that the board received the material in advance of the meeting.

Specific Decisions: Minutes should reflect the specific decisions taken at the meeting, whether they involved a decision to take action or not to take action. If necessary for compliance or fiduciary duty purposes, the minutes should reflect those specific factors that were material to the board’s decision. In this regard, it may often be useful to record the board’s consideration of advantages and disadvantages of, and alternatives to, a specific proposal.

Recording Conflicts, Dissents, and Abstentions: Minutes should reflect those directors who refrain from voting or participating in the discussion due to identified conflicts of interest, as it is vitally important to establish the disinterested nature of any board action. In addition, the current liability environment suggests accommodating the interests of individual directors who wish their dissenting vote or abstention be reflected for the record.

Executive Sessions: Increasingly popular as a “best practice,” it may be unnecessary to take detailed minutes of executive sessions as long as some written record is kept confirming the session was held, its participants and the date, time, location, and duration of the meeting.

The Role of the Scrivener: Given the significance attributed to minutes by all participants in the governance process, it is important that an individual with strong familiarity with applicable governance practices and legal principles oversees the meeting minutes process. This person must have the expertise to recognize nuances of the discussion, the credibility to suspend a particular discussion to ask for clarification and the authority to assure the accuracy of the final minutes and their consistency with related corporate disclosures.

The Review Process: It is the board’s responsibility to ensure the minutes are complete and accurate, and therefore must make a *bona fide* effort to promptly review and approve draft minutes. Excessive editing by management should be discouraged to avoid any suggestion of a lack of integrity in the minutes.

Secretary and Directors’ Notes: Ideally, the final minutes approved by the board (and materials incorporated by reference) should be the only record of the board or committee meeting. While directors may wish to take notes regarding the meeting to which they can refer when subsequently reviewing the draft minutes, there are liability risks associated with such practice. Rather, the director may prudently choose to rely on minutes taken by a neutral, trained party, which are more likely to represent an accurate and complete record of meeting activity.

Meeting minute records should be kept for a time period equal to the longest statute of limitations applicable to hospital operations (usually five years but can be a specific state law question). When purging outdated records, as with anything, be sure to dispose of them safely by shredding the files. Archiving these records in electronic storage will simplify file maintenance.

There are two widely used alternative styles for keeping meeting minutes: short form or long form, and there are advantages and disadvantages to both. The table below describes each, and proposes a “mixed form” that could present a balance between the two styles, depending on the nature of the agenda item/discussion. It can be helpful for the board to develop a corporate documentation policy (with the understanding that general counsel will provide direction on content for those issues where it is felt there is exposure risk) and review/update it annually.²

Short-Form Minutes	
Advantages	Disadvantages
Concise, easy way to determine action taken by the board or committee.	Does not spell out reasoning for action taken by the board or committee.
Helps avoid ambiguity.	Does not clearly evidence the board’s diligence in dealing with specific matters.
Presents less language to be misconstrued in a litigation context.	Case law may require more detail for certain kinds of transactions.
	Calls for the secretary to know when case law would require more detail for certain kinds of transactions.
	Does not allow for record to serve as detail reference.
Long-Form Minutes	
Advantages	Disadvantages
Spells out reasons board has taken action and provides evidence of the board’s diligence in dealing with specific matters.	Provides greater opportunity for misinterpretation of language, particularly in a litigation context.
Presents clearer picture of total deliberation process.	May include extraneous information, which may be confusing.
More in tune with recent case law for material transactions.	Not as direct in explaining action taken by the board or committee.
Does not require secretary to know when case law would require more detail for certain kinds of transactions.	
Maintains consistency with current approach.	
Mixed-Form Minutes	
Advantages	Disadvantages
Can limit exposure risk.	Does not remain consistent with current practices.
Provides a more flexible approach.	

² Adapted from Corporate Documentation Memo to the Board of Trustees, Juanita Hernandez, Corporate Governance Officer, Community Medical Center, Fresno, CA (2009).

Board Reference Manual: Things to Include

All board members should have access to a reference manual of board bylaws, policies, and other pertinent information. The governance support person puts together and updates this manual as needed. This manual can be made available on the board intranet or portal, and every board member should be familiar with this information.³

Your board's reference manual should include:

- Bylaws
- Articles of incorporation
- Board policies and procedures
- Board job descriptions and committee charters
- Board and committee rosters
- Senior management directory and appropriate organizational charts; facility maps
- Board calendar reflecting board and committee meetings, educational opportunities, and other events such as retreats and social gatherings
- Applicable federal and state laws regarding non-profit healthcare and governance issues
- Information about regulatory/accreditation bodies such as:
 - » The Joint Commission
 - » Centers for Medicare and Medicaid Services
 - » U.S. Department of Health and Human Services (HHS)
 - » Your state hospital association and other related state agencies

Board-Related Correspondence and Files

As a governance support person, you act as gatekeeper for all the board's records. You are the touchstone in communication between the board members, chair, and CEO, as well as the proprietor of legal documentation. Thus, the board depends on you to:

- Coordinate the preparation of all reports, studies, and other materials requested by the board and its committees.
- Maintain all records and files (including the board reference manual, mentioned above).
- Provide corporate documentation and relevant explanations to federal and state regulatory agencies, as well as to corporate banking and financial institutions to meet compliance requirements.
- Maintain complete corporate records in a safe environment.

Corporate records could include a copy of the policy pertaining to corporate records, a list of corporate record, and the retention schedule. Some organizations bind minutes annually—this responsibility also falls in this area.

³ For more information about board bylaws, policies, and procedures, see *Elements of Governance[®]: Articles, Bylaws, and Policies: Deciding What Goes Where*, The Governance Institute, 2008.

Request for Public Records

Because of the public nature of some hospitals (specifically government-sponsored, county/district hospitals), members of the public and the media often ask for various board records. Reasons may have to do with approvals for capital equipment, building plans, minutes, tax mileage, and so forth.

With regards to collecting information on individual board and committee members, some organizations ask board candidates to fill out a questionnaire providing his or her personal information and requiring him or her to answer some key questions related to skills, background, and qualifications for board membership—even before accepting them to the board. Information collected on each board and committee member can include:

- Full name
- Age
- Gender and ethnicity
- Home and cell phone numbers
- Email address
- Business information (title, company, address, phone, fax, email, and executive assistant's name, phone, email)
- Level of education completed and the educational institution
- Personal information (spouse's name, home address, children's names, birthday, community affiliations, dietary restrictions/allergies)
- Board-related information (date of original appointment, years of service, position on the board, committee appointments)
- Mail delivery preference
- Travel profile
- Historical information (i.e., appointments to the board and dates of change in status, past terms of office, attendance records, etc., which should be maintained for archival purposes)
- Social security numbers (required on the IRS Form 990), which should be kept in a locked and highly confidential file to maintain security of this information

Board Member Orientation and Continuing Education

Providing excellent governance support begins with a firm grasp of the organization's history, the current role in the community it serves, and its mission and vision. Part of your role is to provide orientation for new board members.

The actual work of the board centers on board roles, fiduciary duties, and core responsibilities. Board roles are the “how” of governance—the things the board needs to do: 1) policy formulation, 2) decision making, and 3) oversight. Each should be explained in detail, within the context of how your board does its work, providing relevant examples. As board support person, you:

- Serve as the primary contact person for the orientation of new board members.
- Develop, coordinate, and update orientation programs for new board members.
- Provide individual board member orientation assistance as needed.

- Conduct a continuing education needs assessment for board members.
- Develop, coordinate, and update appropriate and effective continuing education programs and schedules.
- Maintain and meet the board's budget, processing expenses, and disbursing funds when authorized by the president/CEO, board chairperson, or board secretary/treasurer.

Beyond fiduciary duties and responsibilities, new trustees' introduction to the organization should include, but is not limited to, a brief description of the organization, a review of the organization chart and the many factors influencing the provision of health service, and the importance of sound governance principles.

Things to include in a board orientation binder:

- Names and contact information of each board member
- Executive leadership business cards/contact information
- Mission and vision statement of the organization
- History of the organization (information and statistics)
- Medical staff organizational structure
- Description of the board's structure and operations including meeting dates and job descriptions
- Policies and charters
- Conflict-of-interest policy and disclosure statement
- Board bylaws
- The organization's strategic plan
- Financial information, including the organization's budget, audit, investments, insurance, and funding information
- Community benefit report
- Annual report

Board Committees

The governance support person offers similar assistance to the board's committees as it does to the board itself. Understanding the responsibilities of each committee is a must, especially as it is often the governance support person's responsibility to provide orientation and continuing education to new committee members.

Committee structure should be designed to reflect best judgments on how to optimize the following criteria:

- Local legal requirements
- Heritage of the organization
- Talents and expertise of individual board members
- Strategic priorities of the organization
- Need for efficiency
- Need for effectiveness
- Market pressures

Some of the more common board committees include (but are not limited to) the following:

1. **Executive committee:** to transact the business of the full board in the interim between meetings.
2. **Executive compensation committee:** to oversee matters pertaining to the employment, review, and compensation of the CEO, and reviewing the total compensation program for “highly compensated” executives and employed physicians to ensure they are both competitive and compliant with IRS and other regulatory agencies.
3. **Strategic planning committee:** to recommend to the board and review performance toward overall long-range strategic plans, as well as provide advice on urgent corporate strategic issues (includes oversight of strategy regarding all technology).
4. **Quality/safety committee:** to oversee the delivery of quality patient care and a patient-centered experience throughout the hospital/system.
5. **Audit and compliance committee:** to provide principal oversight for the accuracy and integrity of financial reporting systems, internal controls, and the internal and external audit processes; overseeing and monitoring the compliance program.
6. **Finance committee:** to oversee all significant financial matters affecting the hospital/system (and its affiliates), including setting financial policy; evaluating financial performance; reviewing assets, transfers, and debt; reviewing financial matters concerning the retirement program; and undertaking financial planning and analysis, including establishing capital and operating targets.
7. **Governance and nominating committee:** to ensure that the governance of the hospital/system is effective and efficient and consistent with “best practices” and legal and regulatory guidelines.

Board Self-Assessment & Development

The governance support person is responsible for assistance with (and facilitation of) the board self-assessment process, and any related activities having to do with the self-assessment and resulting development plans. The governance effectiveness committee (or the committee responsible for this) will provide direction in this area.

Resource and Other Support Activities

- Maintain a governance resource library of published material pertinent to boards.
- Research, select, and distribute information of interest to the board.
- Facilitate communication between the medical staff and the board.
- Perform duties as requested by the president/CEO, board chairperson, and/or board secretary to ensure the effective and efficient functioning of the board.
- Coordinate travel to seminars/conferences.
- Coordinate retreats.
- Provide necessary service and leadership to effectively accomplish institutional goals.

Governance Support for Public Hospitals

Some public hospitals include in their board's job description an advocacy statement and reference to fostering personal relationships with other local governmental officials and legislators, through various activities.

These types of advocacy activities require coordination from governance support staff: maintaining lines of communication between the parties and building a relationship with the various parties to help facilitate scheduling of meetings. Some public hospitals have a "legislative liaison" on staff who works closely with the governance support staff.

Conclusion

Fulfilling the demand for good governance begins with the governance support professional. You are the driving force behind documentation, coordination, and communication of the board's activities. Excellent governance support professionals are mindful of the fiduciary duties and core responsibilities of the boards and committees they serve and have a solid understanding of their own responsibilities:

- Coordinating board meetings
- Providing a comprehensive board manual (and keeping it current)
- Organizing board-related correspondence and files
- Assisting with, facilitating, and/or conducting board orientation and continuing education
- Assisting with governance activities and board self-assessment
- Supplying resources and other support

Though we cannot offer a governance support manual that can be applied to every organization, we hope this serves as a practical guide to help you, whether you're only beginning or continuing to provide effective governance support.

Glossary of Terms

AHA American Hospital Association

Agency for Healthcare Research and Quality (AHRQ) A government agency that supports and conducts research that evaluates the effectiveness, quality, and value of healthcare in everyday settings, uncovering the evidence and developing the knowledge and tools that yield measurable improvements in quality.

Benchmark A quantifiable measure that serves as a standard by which others may be measured or judged. Dashboards normally include benchmarks of competing organizations at a local, state, and nationwide basis, and also internal benchmarks showing the organization's improvement on its own. The caution about using healthcare benchmarks is that much so-called "benchmark" data available are essentially averages, and comparing your hospital to other average hospitals will not necessarily result in high or improved performance.

CMS Centers for Medicare and Medicaid Services

Conflict of interest (COI) A situation in which someone in a position of trust, such as a lawyer, insurance adjuster, a politician, executive or director of a corporation/non-profit organization, or a medical research scientist or physician, has competing professional or personal interests that may impair his/her ability to fulfill duties to the corporation or organization impartially. A conflict of interest can exist even if no unethical or improper act results from it.

The non-profit board's obligations with respect to conflict of interest arise within the context of the fiduciary duty of loyalty, which legally obligates a director to exercise his/her powers in good faith and in the best interests of the organization, as opposed to his/her own interests or the interests of another entity.

Dashboard A report that displays the state of the hospital at a glance, using standard visual symbols much like a car's dashboard. In essence, the dashboard shows key indicators related to various aspects of the hospital, including financial, quality, and patient satisfaction measures. Most hospitals use more than one dashboard, showing differing levels of detail for the board and management team. They are also referred to as "executive dashboards" or "charts of key performance indicators."

Form 990 The IRS form tax-exempt organizations are required to file in lieu of a tax return. Completed forms are available to the public and therefore can affect public perception of an organization. Schedule H of the Form 990 specifically refers to hospitals, and according to the IRS, "Schedule H must be completed by an organization that operates at least one facility that is, or is required to be, licensed, registered, or similarly recognized by a state as a hospital." Schedule H covers charity care and community

benefit; joint ventures; and Medicare, bad debt, and other items. Organizations not required to file Form 990 might wish to use it for state reporting purposes.

In December 2007, the IRS released a revised version of Form 990 that clarifies metrics, moves the explanation of the organization's "program service accomplishments" much closer to the beginning of the form, clarifies and streamlines many of the compensation items that must be reported, streamlines portions of Schedule H, delays full Schedule H reporting by one year, and includes expanded governance guidelines. This revised Form 990 is to be filed for the 2008 tax year and going forward and the full Schedule H is required for the 2009 tax year and going forward.

For more information and to download a copy of the revised Form 990, visit www.irs.gov.

Health Care Quality Improvement Act (HCQIA) Passed by Congress in 1986, this legislation provides healthcare organizations and their peer review bodies immunity from monetary damages as a result of "adverse professional review actions" that relate to the competence or professional conduct of an affected physician or dentist. The act has established standards for due process when restricting or terminating a physician's privileges. It does not prevent other types of legal action (e.g., injunctions or restraining orders) and it does not convey protection of peer review documents from discovery in legal proceedings. HCQIA also created the National Practitioner Data Bank (NPDB), a system for reporting physicians whose competency has been judged inadequate.

Most medical staff "fair hearing plans" are written to comply with the due process requirements of HCQIA. HCQIA immunity applies to every jurisdiction in the United States.

Health Insurance Portability and Accountability Act of 1996 (HIPAA) Federal law that addresses: 1) health coverage for workers and their families when they change or lose jobs; 2) reduction in fraud and abuse by giving government more flexibility in pursuing organizations suspected of fraud; and 3) administrative simplification, to standardize the electronic environment for the most common healthcare back-office functions; it includes security and privacy standards.

Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS® or Hospital CAHPS®) A nationally standardized survey developed by CMS and AHRQ that asks consumers and patients to report on and evaluate their experiences with care provided in hospitals. Questions include the communication skills of providers and the accessibility of services.

The Affordable Care Act includes HCAHPS among the measures to be used to calculate value-based incentive payments in the hospital value-based purchasing program, which began with discharges in October 2012.

Institute for Healthcare Improvement (IHI) A not-for-profit organization focusing on the improvement of healthcare throughout the world. Founded in 1991 and based in Cambridge, Massachusetts, IHI was the force behind the 100,000 Lives and 5 Million Lives Campaigns. IHI's goal is to help accelerate change in healthcare by cultivating promising concepts for improving patient care and turning those ideas into action.

Institute of Medicine (IOM) The Institute of Medicine serves as advisor to the nation to improve health. Established in 1970 under the charter of the National Academy of Sciences, the Institute of Medicine provides independent, objective, evidence-based advice to policymakers, health professionals, the private sector, and the public. Two groundbreaking reports from the IOM have spurred national movement in improving quality: *To Err is Human* (1999), and *Crossing the Quality Chasm* (2001).

International Organization for Standardization (ISO) ISO is a network of the national standards institutes of 157 countries. It is a non-governmental organization but it acts as a bridging organization in which a consensus can be reached on solutions that meet both the requirements of business and the broader needs of society, such as the needs of stakeholder groups like consumers and users. The ISO 9000 family of standards (9001–9004) is primarily concerned with quality management—specifically what organizations do to fulfill the customer’s quality requirements and applicable regulatory requirements, while aiming to enhance customer satisfaction and achieve continual improvement of performance in pursuit of these objectives. Some healthcare organizations use ISO 9000 in lieu of accreditation by The Joint Commission.

The Joint Commission A national organization that evaluates and monitors the quality of care provided in hospitals, healthcare organizations, and agencies based on established standards. CMS grants deemed status for participation in Medicare when healthcare organizations are accredited by The Joint Commission. Formerly known as the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO).

Joint venture The typical healthcare joint venture between a hospital and physicians consists of an outpatient facility that offers the technical component of healthcare services. Physicians credentialed to perform services at the facility (typically not limited to investors) perform the professional component of these services. Examples are ambulatory surgical centers, imaging centers, and diagnostic cardiac catheterization laboratories. They are normally structured as limited liability companies in order to afford the physician investors protection from double taxation while limiting the parties’ risk of personal liability. According to IRS guidelines, in order for a tax-exempt organization’s participation in a joint venture with non-exempt participants to be considered an activity related to its exempt purpose, the exempt organization must be able to exercise sufficient control over the venture to ensure that it is operated in an exempt manner. (Other types of joint ventures include: equity joint venture, “under arrangements” joint venture, participating tax-exempt bond transaction, and gainsharing.)

Patient Safety & Quality Improvement Act (PSQIA) As of July 29, 2005, the act was designed to create a national patient safety center to address medical errors within the healthcare system. It establishes patient safety organizations (PSOs) to which providers (individuals and entities) can voluntarily report medical errors and patient safety information. The PSOs will then take the information, analyze it, and provide feedback.

Sarbanes-Oxley Act (SOA or SOX) Comprehensive legislation passed by Congress in 2002 that affects corporate governance, financial disclosure, and the practice of public accounting for publicly-held corporations. While its provisions do not specifically affect non-profit organizations, many healthcare organizations have applied it to their practices, and since 2002 there has been much action at the government level to look at the business practices of non-profit organizations with the same scrutiny, especially healthcare organizations.

Stark Law & Regulations

- » **Stark I** Colloquial name for the physician self-referral prohibitions introduced to Congress in 1988 by California representative Fortney Pete Stark. The law provides that a physician or an immediate family member who has a financial relationship with an entity may not refer a Medicare patient to that entity for clinical laboratory services, unless an applicable exception exists. In addition, the law prevents an entity with which a physician has a financial relationship from billing Medicare or a beneficiary for clinical laboratory services furnished pursuant to a prohibited referral.
- » **Stark II** The 1993 amendments to Stark I extended the physician self-referral restrictions to Medicaid services and beneficiaries and expanded the referral and billing prohibitions to 10 additional designated health services reimbursable by Medicare or Medicaid. The 10 services are 1) physical therapy, 2) occupational therapy, 3) radiology services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services, 4) radiation therapy services and supplies, 5) durable medical equipment (DME) and supplies, 6) parenteral and enteral nutrients, equipment, and supplies, 7) prosthetics, orthotics, and prosthetic devices, 8) home health services and supplies, 9) outpatient prescription drugs, and 10) inpatient and outpatient hospital services. Stark II became effective on January 1, 1995. The statute contains many exceptions, which can be grouped into categories applicable to all financial relationships, to ownership and investment interests, and to compensation arrangements.
- » **Stark II Phase III** Additional regulations interpreting the Stark statutes, which were promulgated and went in to effect in December of 2007. Their most controversial provision says that a physician “stands in the shoes” of his or her group practice for the purpose of determining whether Stark covers the doctor’s relationship with another entity. This requirement was postponed until December 2008 for academic medical centers and was then amended starting October 2008 so that physicians are permitted, but not required to stand in the shoes of their physician organization if they have no ownership or investment interest in them. One positive feature of the Stark II Phase III regulations was making the rules regarding physician recruitment more flexible.

References

The Governance Institute. *Elements of Governance®: Board Job Descriptions & Committee Charters* (Second Edition). San Diego, CA: The Governance Institute, 2009.

The Governance Institute. *Elements of Governance®: Building a Board Education Program*. San Diego, CA: The Governance Institute, 2016.

The Governance Institute. *Elements of Governance®: Effective Board Meetings, Second Edition*. San Diego, CA: The Governance Institute, 2015.

The Governance Institute. *Healthcare Acronyms & Terms for Boards and Medical Leaders: Ninth Edition*. San Diego, CA: The Governance Institute, 2017.

Killian, Rex P., J.D. "Health System Governance: The Board Meeting Agenda." *Board-Room Press*, April 2008. San Diego, CA: The Governance Institute.

Peisert, Kathryn C. *21st-Century Care Delivery: Governing in the New Healthcare Industry*. San Diego, CA: The Governance Institute, 2015.

Peisert, Kathryn C. *Elements of Governance®: Building a Comprehensive Board Orientation Program*. San Diego, CA: The Governance Institute, 2009.

Peregrine, Michael. "The Basic Principles of Corporate Minute Taking." *Governance Notes*, August 2015. San Diego, CA: The Governance Institute.

Peregrine, Michael W. "Corporate Minute-Taking: A General Counsel's Guide." *Health Lawyers News*, January 2006. Washington, D.C.: American Health Lawyers Association.

Peregrine, Michael W. *Elements of Governance®: Articles, Bylaws, & Policies: Deciding What Goes Where*. San Diego, CA: The Governance Institute, 2008.

Smithsonian Institution. "Report of the Governance Committee to the Board of Regents," June 14, 2007 (https://www.si.edu/content/governance/pdf/Governance_Committee_Report.pdf).

