

The Board's Role

Fundamental Fiduciary Duties and Oversight Responsibilities

Two of the most important responsibilities as a board member are to:

1. Fulfill your fiduciary duties and oversight responsibilities.
2. Ensure that the organization achieves its mission, vision, and strategic direction.

Boards have legally mandated fiduciary duties to their organizations. These duties describe the manner in which board members are required to carry out their roles and responsibilities. The director's fundamental duty to manage the corporate enterprise by delegation to full-time managers is referred to as the "duty of oversight." This duty is central to everything a director does. It obliges directors to exercise reasonable and prudent oversight with respect to corporate officers, agents, and employees to whom such affairs are delegated. To adequately discharge the duty of oversight requires the director to give attention to such matters as:

- The current business and financial performance of the organization
- The principal activities of senior management
- The effectiveness of, and senior management's commitment to, the corporate compliance plan
- Achievement of the charitable mission of the organization, which incorporates the organization's duty to provide quality and safe patient care
- The presence of an effective reporting system to the board
- Selection of competent senior management
- Establishing institutional norms and procedures (e.g., compliance programs)
- Reviewing and having input into management-formulated strategy
- Management of institutional investments and access to restricted gifts
- Monitoring the performance of the enterprise and of senior management

The related duties of care, loyalty, and obedience describe the manner in which directors are required to carry out their fundamental duty of oversight of the organization:

- **Duty of Care** requires board members to have knowledge of all reasonably available and pertinent information before taking action. The board member must act in good faith, with the care of an ordinarily prudent businessperson in similar circumstances, and in a manner he or she reasonably believes to be in the best interest of the organization.
- **Duty of Loyalty** requires board members to candidly discharge their duties in a manner designed to benefit only the corporate enterprise, not the individual interests of the board member. It incorporates the duty to disclose situations that may present a potential for conflict with the corporation's mission, refrain from discussing confidential board business with others, as well as a duty to avoid competition with the corporation.
- **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.



fi • du • cia • ry: To hold something in trust for another...to assume responsibility or ownership of property...to keep, use, or administer for another's benefit. It encompasses *all* oversight responsibilities of the board, not just financial.

A note about system governance structures: In healthcare systems with tiered governance structures, there can be both legally constituted governing boards as well as advisory boards. *Legally constituted governing boards* bear sole and ultimate responsibility for the affairs of an organization. They serve as the fiduciary agent of the organization's owners (whether they are shareholders or stakeholders) and possess legally mandated responsibilities and functions. *Advisory bodies* (alternately called community boards, local boards, and so forth) are non-fiduciary entities created by the health system for the purpose of providing advice and counsel to the system board, the management of the subsidiary itself, or both.

Fiduciary Duties of Directors (Tax-Exempt Organizations)

Care

Loyalty

Obedience

Core Responsibilities

Quality Oversight

Financial Oversight

Strategic Direction

Board Development

Management Oversight

Community Benefit/Advocacy

The best way for boards to meet and fulfill their responsibilities is to take on three key roles:

- **Policy formulation:** Boards formulate policy to give the organization direction. Policies are statements of intent that guide and constrain further decision making and action and limit subsequent choices. Policies provide a framework for the decision-making role.
- **Decision making:** This is considered to be the most important role of governance, since much of what boards do eventually comes down to making choices. Decisions are based on policy. A board can choose to retain authority with respect to an issue related to one of its responsibilities, or the board can delegate decision-making authority to management or the medical staff.
- **Oversight:** This is central to everything boards do. Boards engage in oversight by monitoring decisions and actions to ensure they conform to board policy and the organization's strategic plans and budgets, and produce intended results. Management and the medical staff are accountable to the board for the decisions they make and the actions they undertake. Proper oversight ensures this accountability.

The primary function of a hospital or health system board is to direct the organization toward achieving its mission. It is essential that each board member has a belief in and passion for the organization's cause. The board's role is then to turn the mission into policies that guide performance in six oversight areas:

- Quality of care oversight
- Financial oversight
- Strategic direction/mission oversight
- Board self-assessment and development
- Management oversight
- Community benefit and advocacy

For more details on the board's role related to each of these oversight responsibilities, see our [Board Orientation Manual](#).

To Dos: To help achieve the mission:

- ✓ Establish *why* the organization exists (*whom* you serve and *what* you do).
- ✓ Ensure the mission is highly visible (e.g., on the organization's Web site).
- ✓ Share the organization's history and relevance.
- ✓ Communicate and reinforce the mission for common understanding.
- ✓ Ensure *all* board members know and clearly understand the mission. (Practices to help in these efforts include reading the mission at board meetings or having "mission-in-practice" vignettes.)
- ✓ Establish specific criteria for each policy area so that you can know (and demonstrate) when the mission is being fulfilled. These criteria should inform goals and metrics for the organization's strategic plan.

Discussion Questions:

- Do all board members know and clearly understand what their most important responsibilities are?
- What is being done on a regular basis to ensure board members are effectively carrying out their roles and responsibilities?
- Does the board have detailed policies and procedures in place that successfully assist it in performing these duties and obligations?
- If asked, could all board members recite the mission statement and provide examples of the mission in action?

Resource Toolbox:

[Fundamental Fiduciary Duties of the Non-profit Healthcare Director](#) (Elements of Governance)
[Board Orientation Manual](#)

The Roles of Governance vs. Management

The healthcare board must represent and balance the interests of its constituents. This is best accomplished by focusing board efforts on governance—the area where the board is best positioned to add value to the organization. Sometimes, however, boards drift into the responsibilities of management, to the detriment of the organization.

Having a clear understanding of the difference between the roles of governance vs. management is the only way to ensure that the board is not crossing over into management's domain. The board's role is to take strategic approaches to issues rather than focus on operational tasks. The board is responsible for *setting overall direction and strategy*, while executive management *implements* board directives for overall operations and performance. This results in good governance.

Ideally, governance and management is a joint endeavor. The future of the organization depends on the effectiveness of their mutual efforts. Nevertheless, it is the healthcare organization's governing board that is ultimately responsible—legally and morally—for the institution and all services it provides. So both the board and the CEO must diligently support their respective roles in the organization. As defined in the previous section, the board's role is to set policy, make decisions, and oversee organizational performance. (View the Governance vs. Management Matrix on the following page for a list of core board responsibilities and sample governance-level questions.)

Governance experts have identified two primary reasons boards stray into operations and away from policy:

- **They gravitate to the familiar:** Many board members spend their professional lives in operations-related roles in the for-profit sector, and the non-profit healthcare arena is unfamiliar territory. Not only must the board member acknowledge the differences in operational imperatives between his or her business and that of the healthcare organization, but also the differences in management and governance.
- **They lose faith in the CEO:** This happens more frequently than one would expect. If, for example, a board member believes that management is not handling an issue adequately or correctly, the temptation to step in personally is difficult to ignore. However, the board member does have more effective options; that is, bringing the issue directly to the CEO for discussion and resolution, bringing up the issue at a board meeting, and, if still unsatisfied, working through the executive management oversight responsibility and CEO performance evaluation.

Governance vs. Management Matrix

Core Responsibility	Governance-Level Questions
Setting Strategic Direction	<ul style="list-style-type: none"> • How will we increase access to healthcare services in the outlying areas of our community? • Why has our market share in orthopedics continued to decrease over the last five years, and what is management doing to reverse the trend? <p><i>(The board should not decide exactly which piece of property should be purchased for a new clinic.)</i></p>
Financial Oversight	<ul style="list-style-type: none"> • What is our targeted bond rating and how well are we doing towards achieving that goal? • Why is ___ (insert the measure) trending down, and what is management doing to correct it? <p><i>(Not analyzing the budget, line-item by line-item to determine how to reduce costs by \$100,000.)</i></p>
Quality & Patient Safety	<ul style="list-style-type: none"> • What are our clinical quality and patient safety outcomes vs. our own targets, our peers' scores, and national benchmarks (e.g., CMS core measures)? What is management doing to improve our rank/scores? • What serious, care-related adverse events have occurred in the past year? What did we learn from these events? What processes did management put in place to ensure they won't ever happen again? <p><i>(The board should not decide whether Mary should be promoted to Director of Quality Improvement.)</i></p>
Management Oversight	<ul style="list-style-type: none"> • What annual goals will we set for the CEO's individual performance and the performance of the organization as a whole? • Why hasn't the CEO accomplished the goal, and what is he/she doing to ensure achievement of that target? <p><i>(The board should not encourage nurses and physicians to come to the board with their concerns about the CEO's performance.)</i></p>
Community Health & Advocacy	<ul style="list-style-type: none"> • What percentage of our revenues will be dedicated to community benefit? • Why hasn't management assessed the community's health-care needs in the last three years, and what is management doing to correct that situation? <p><i>(The board should not be involved in labor negotiations.)</i></p>
Board Self-Assessment & Development	<ul style="list-style-type: none"> • What improvement goals does management think we as a board should set for ourselves? Are we micromanaging? • What should we do differently to ensure a healthy, collaborative relationship with the CEO and the senior management team? <p><i>(The board should not include any managers other than the CEO in a session devoted to board enhancement.)</i></p>

Even if boards understand their roles and responsibilities, they occasionally may find themselves in situations where these become blurry. When a board member or the entire board steps outside its governance domain, it can make matters worse, and usually results in a rift between the board and executive management.

When a board steps outside its governance roles and responsibilities, it may end up:

- Shifting the board’s focus from strategic to operational issues
- Diverting board attention from its primary roles and responsibilities to those of its CEO
- Undermining CEO authority
- Sending mixed messages to the organization’s constituents—physicians, employees, patients, and the community it serves

What Roles and Responsibilities Are Not

Role	Example
Policy making is NOT...	Policy implementation
Decision making is NOT...	Decision implementation
Oversight is NOT...	Close scrutiny of day-to-day operations
Responsibility	Example
Mission and strategic planning oversight are NOT...	Changing the course of the organization without management counsel
Quality of care oversight is NOT...	Challenging medical staff performance without management input
Executive management oversight is NOT...	Stepping in to resolve individual operational issues that are the responsibility of the CEO
Financial oversight is NOT...	Expecting management to explain basic financial theory each time financial statements are presented to the board
Board effectiveness is NOT...	An informal process

To Dos: To avoid dipping into management issues the board should:

- ✓ Ensure it is focusing on the mission.
- ✓ Set direction and measurable goals.
- ✓ Develop board-level (not operational) policies.
- ✓ Ensure systems and processes are in place and functioning well.
- ✓ Monitor progress and hold management accountable.





Governance vs. Management: Who Does What?

As an exercise in governance and management, it helps to consider specific tasks that require the attention of the board, management, or both. [Click here](#) to download a table that outlines activities that may fall within the scope of a board's deliberations.

Review these activities and select where you believe the responsibilities rest. Because the distinction between management and governance varies from organization to organization, and from time to time, within each organization, there are no "correct" answers. However, we provide suggestions in the column furthest to the right.

Discussion Questions:

- Does the board have a good understanding of the different roles of management and governance? How do these roles play out in our organization?
- Does the board have systems or checkpoints in place to ensure the line between management and governance doesn't become blurred?
- Does our management team and board have a good, appropriate partnership? How can this be improved?
- What are some of the challenges our organization is facing today that might put our board at risk of getting down into management details?

Resource Toolbox:

[The Distinction Between Management & Governance](#), Second Edition (Elements of Governance)

["The Difference Between Governance and Management"](#) (Governance Notes article)

["Advisors' Corner: A Chronic Condition: Distinguishing Governance from Management"](#) (*BoardRoom Press* article)