# Governance Notes

# Digitizing the Board for Efficiency

*By Nasdaq Governance Solutions*

The high-profile corporate scandals of the late 1990s ushered in legislation and mandates that substantially increased the workload of boards. Coupled with the acceleration of Internet use and the evolution of technology, this new corporate governance landscape has led to a higher level of board engagement. Boards now spend as much time looking forward to ensure the organization remains competitive as they do looking backward at previous quarter financials.

A robust board portal is a helpful platform for governance support professionals who want to facilitate meaningful interaction between board members and maximize their time. Board portals have evolved beyond paperless board books into integrated communication platforms with added security for boards and leadership teams that facilitate decision making and automate administrative aspects of governance. A digitized board is freed from cumbersome administrative processes to focus instead on core fiduciary duties including financial oversight, strategic planning, and risk management.

> **Board portals help recapture precious time for board members.**

While many public company boards utilize a portal in some form or fashion, there is a wide range in the sophistication of how organizations and their boards are utilizing them. At the bare minimum, some use their portals merely to create paperless board books that are uploaded in a PDF format for secure delivery and sharing. Limiting use of the portal to a virtual blackboard represents a lost opportunity, however, as there are tremendous efficiencies to be gained when the functionalities of a board portal are fully exploited. This article provides an overview of key board portal functionalities, followed by tips for integrating that software into governance infrastructure and workflows.

## The Paperless Boardroom

Paper processes are far too slow to keep up with the pace of today's boardroom, and don't address the security and communication needs of governance support professionals and modern boards. Board portals facilitate communication and streamline governance processes, for both boards and governance support professionals.

### Empowers Decision Making

Board portals help recapture precious time for board members. Regulatory scrutiny, globalization, competitive pressures, and an increase in

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shareholder activity have increased the scope and volume of board work, and a great deal of communication and preparation is now taking place between board meetings. When board members collaborate and plan offline in a secure portal, they are better able to focus on important strategic work during board meetings. Governance support professionals and boards can use portals between meetings to edit documents, share notes, ask questions, conduct surveys, take votes, and schedule committee meetings. Auto-syncing capabilities of portals are an indispensable tool because board members can make changes and share notes within the documents that appear real-time or as soon as the director is online.

*Streamlines Corporate Governance Administration*

Board portal features and functionalities help automate and streamline administrative functions of corporate governance. A board portal includes a toolkit for creating online agendas, scheduling meetings, managing and tallying director input, running board presentations, and assembling digital board books. Board meeting agendas no longer devote precious time to opening remarks, approval of the minutes, or review of administrative matters like upcoming calendars. Consent agendas, regulatory matters, and board meeting minutes are reviewed and approved by unanimous written consent or delegated authority through the board portal. Board members have a space to ask questions and engage in conversations prior to approvals.

Governance support professionals may be concerned with ensuring that sensitive corporate information doesn't fall into the wrong hands. Board portals centralize record keeping by maintaining key documents and records in a library. Digitized file cabinets within the portal offer push-button security

## Key Takeaways
### Digitizing the Board: How to Drive Adoption

Paperless boardrooms offer different benefits for board members, from improved productivity to enhanced communication and streamlined administrative processes. If board members understand the intricacies of the technology and readily implement best practices, efficiency levels may rise. The following guidelines help make adoption simple, intuitive, and practical:

- **Keep it familiar.** A solution that's accessible via an iPad app helps make it easy for board members to work from anywhere and access company documents, meeting agendas, and board-related information. Consider providing board members an iPad if they don't have one or need an upgrade.
- **Include training as needed.** While board members may have some experience with board portals, the specific steps required to use the software at your organization may be different from what they've seen in the past. If board members haven't used the software previously, provide a training session to demonstrate the steps involved and ensure someone is available to answer any questions or provide helpful tips and best practices after initial training is completed.
- **Make it part of the onboarding process.** Orientation materials can be distributed to new directors through the portal. This setup provides directors with key information about the company. It also gives them a chance to use the software and see how it works.
- **Use the board portal to connect.** Explain to board members that the software offers a space to communicate sensitive information. All emails between the company and the directors can be sent through the portal. As board members interact with others, they may form habits to continue using the software in the future.

enhancements like permission settings that control who sees what documents and remote purging of downloaded board materials and directors' notes at the end of each quarter.

*Digitizes Assessment and Compliance Processes*

In addition to the convenience of paperless board books and streamlined communication, some portals include sophisticated digital D&O questionnaires and board assessment tools. Governance support professionals can also coordinate online voting, eSignatures, and conflict-of-interest

statements. These tools bring data integrity and efficiencies to processes that are foundational to corporate compensation, compliance, and board refreshment.

### Tips for Implementing Board Portal Technology

Companies that utilize board portals have found that iPads are a board member's device of choice for working remotely and accessing key documents, agendas, and information—so adopting a portal that integrates an iPad app is helpful. At Nasdaq, we see our board portal as an extension of the professional relationship we maintain with our

**Ultimately, a board portal may help governance support professionals tackle boardroom inefficiencies head on.**

Nasdaq Boardvantage® is a board portal available as part of The Governance Institute's membership, facilitating strategic and efficient collaboration for boards and committees and offering benefits such as:

- One login that allows access to The Governance Institute's resources and tools, therefore optimizing the boards access to timely and applicable educational materials and governance resources
- A customizable dashboard that provides a sophisticated way to present a volume of content in a single view (for example, upcoming meetings, calendars, valuable files, internal and external links, and custom content)
- Time-saving tools such as board book creation, a robust search function, task management capabilities, and meeting planning tools
- Annotation tools to help board members prepare and engage in meetings (shared annotations create new collaboration channels that encourage board members to engage in materials *before* meetings)
- Communication capabilities that allow governance support professionals, board members, and committee members to easily engage with one another
- The ability to approve and vote on written consents, budget approvals, meeting minute approvals, resolutions, and more
- Easily build and distribute questionnaires and surveys
- A central location for board-facing communications, easing the way for board members

And more! For more information, contact your Governance Institute Service Manager or email memberservices@governanceinstitute.com.

- Upload all orientation materials to the portal.
- Use the portal for all email communications between the company and our directors

An efficient way for executives and governance support professionals to test a board portal without inconveniencing board members is to implement it in-house. There are a number of corporate inter-departmental administrative workflows and tasks that can be automated or streamlined through a board portal, including:

- Scheduling department meetings
- Sharing agendas and supporting documents prior to departmental meetings
- Collaborating on project planning documents with department staff
- Approving and signing documents
- Conducting inter-departmental surveys

Ultimately, a board portal may help governance support professionals tackle boardroom inefficiencies head on. Digitization helps streamline governance processes and communications, create a central space for meeting and educational materials, and save time so board members can focus on strategically planning for their organization's future.

board members, one that illustrates tangibly to our directors that we have the greatest respect for their roles and for their time. The portal is a tool that enables us to communicate efficiently and effectively, to teach our directors about our company and industry, and to maximize the voices of our directors.

To ensure that new directors are quickly up to speed on our portal technology, we integrate it into the onboarding process at Nasdaq in the following ways:

- Provide an iPad for any director who doesn't already have one or needs an upgrade.
- Offer training on the software if they haven't used it before.

*The Governance Institute thanks Nasdaq Governance Solutions for contributing this article. For more information, visit www.nasdaq.com/boardvantage.*

# 2020's Top 10 Governance Trends for Hospitals and Health Systems

*By Michael W. Peregrine, Esq., Partner, McDermott Will & Emery LLP*

A review of current developments prompts the following perspectives on governance trends for hospitals and health systems for the remaining three quarters of 2020:

1. **Preparing for more volatility:** Directors will be expected to confront the tactical and strategic implications to their health system of any potential political, social, economic, or regulatory volatility. Such uncertainty will be driven in part by the public health and economic impact of the coronavirus crisis, post-impeachment divided government, and the 2020 elections. Other drivers may include questions concerning trade conflict, income inequality, inflation, and, more generally, continued societal fragmentation. To address these challenges will require directors to be as engaged as possible with the board's agenda and to pursue close interaction with management.

2. **The 2020 election and healthcare:** As the 2020 election cycle moves forward, directors should become generally familiar with the healthcare-related policies of the various candidates at the presidential and congressional levels. These include progressive proposals for "Medicare for All" and more moderate proposals to strengthen the Affordable Care Act and create a public insurance option. Given the responsibility of directors to monitor the long-term sustainability of the organization, it is important that they have some awareness of major proposals that could

## Key Takeaways

When reflecting on these trends, consider the following questions:
- Are board members properly educated on the healthcare-related policies of the candidates at the presidential and congressional levels?
- Do we have directors with broad industry and governance experience, various relevant backgrounds, and diversity in age? Is board turnover happening often enough, or is it time to reevaluate term limits, performance evaluations, and retirement requirements?
- Do we need to reexamine the scope of our corporation's statement of purpose and the related interests of a broader class of stakeholders?
- Have we assessed whether our organization has the capabilities and infrastructure needed to compete in the evolving outpatient environment?
- How is the board currently monitoring innovations to ensure they are feasible, mission-focused, and free of any conflicts of interest?
- Do we need to reevaluate the strength of the corporate compliance program and the extent to which the code of ethics is accepted throughout the organization?
- Is it time to consider significant changes to board structure and decision-making practices?
- Do we need to revisit our existing conflicts identification and resolution processes to ensure they are strong enough to address the complexities of today's environment?

ultimately have a material effect on the healthcare financing model for the health system.

3. **Emphasis on board refreshment:** Despite measures taken to date, healthcare boards will continue to be challenged to achieve specific director turnover and diversity goals across the spectrum. In response to surveys suggesting director tenure continues to be lengthy—that board vacancies occur infrequently and when they do occur the seat is often filled by a director with industry experience—term limits, performance evaluations, and retirement requirements will see wider application. More consideration will be given to electing "new perspective" directors with broader industry, governance,

and background experience and reflecting greater age diversity.

4. **Reexamining purpose:** Given increasing emphasis on corporate social responsibility, healthcare boards will be expected to reexamine the scope of their corporation's statement of purpose and the related interests of a broader class of stakeholders. Boardroom dialogue will gradually move beyond the basic question of whether there is an obligation to address the relationship between stakeholders and purpose, to the question of how best to address such a relationship. Non-profit-based health system boards will need to invest greater focus on how the mission and purpose of their organizations are materially distinguishable from those of for-profit health systems, in

order to support continued claim to tax-exempt status.

5. **Emphasis on business judgment rule:** Evolving judicial interpretation of the Caremark standard for director risk oversight will prompt greater board emphasis on satisfying the business judgment rule. This is particularly the case with respect to the risk management program. Special, documented, and more informed board effort should be made to engage vigorously with management (including the general counsel) on key corporate risk factors. Committee charters should more clearly address risk-monitoring duties. Senior executives should acknowledge board oversight responsibilities and adopt greater sensitivity to the corporate risk profile.

6. **Disruption continues:** Oversight of disruptive industry developments is an essential responsibility of corporate governance. Healthcare boards must continue to be heavily focused on the evolution of technology-based and other forms of business disruption. This is especially the case as "the disruptors" are forcing the evolution of care from the inpatient to the outpatient setting, and as new competitors (e.g., such as non-hospital retail clinics, urgent care centers, and ambulatory surgery centers) are beginning to attract outpatient volume from hospitals. Boards will be expected to play a leading role in the development of strategy designed to address this emerging business reality.

7. **Monitoring innovation:** The rapid increase in health system-sponsored innovation initiatives will prompt closer board scrutiny with respect to feasibility, mission relatedness, and conflicts of interest. The spectacular demise of several prominent tech start-up ventures, regulatory scrutiny of high-profile data and technology ventures, and uncertainty of the application of AI systems will combine to raise expectations of board oversight. The pace with which innovation and related initiatives are pursued will be more measured. The health system's internal innovation development process, and the portfolio and compensation of its innovation executives, will be a particular area of board focus.

8. **Pushing change with compliance programs:** Corporate responsibility developments, such as Major League Baseball's sign-stealing scandal, will prompt closer board oversight of the health system's culture of compliance. This review could include a reevaluation of the strength of the corporate compliance program and the extent to which the code of ethics is accepted throughout the organization. Issues such as funding for compliance and ethics staffing, compliance education and monitoring, compensation for compliance officers, and the company's approach to corrective action and its alignment of compensation incentives with ethical goals are all fair game for board consideration. Boards will encourage the recalibration of organizational compliance efforts to be more responsive to factors such as corporate growth, evolving leadership duties, and formal enterprise risk functions.

9. **Retooling structure and process:** Increasing competitive pressures and focus on stakeholder interests will lead boards to consider significant changes to board structure and decision-making practices. As the National Association of Corporate Directors has recommended, boards will seek to meet the demands of a different operating reality by reshaping thought processes and operational approaches. They will begin to modernize their expertise and behaviors in order to improve the corporation's competitiveness. This may lead to new perspectives on board composition and efficient boardroom processes.

10. **Conflicts complexities:** The continuing evolution of the healthcare industry—and the new transactions and business relationships it generates—has the potential to render the health system's existing conflicts identification and resolution processes obsolete. Complicating factors include the diversification of health system business portfolios, officers' and directors' interest in investing along with the health system in innovative initiatives, the rapid consolidation of the inpatient healthcare market, and changing determinations of who or what is a competitor. The duty of loyalty, and leaders' sensitivity to this duty, are seemingly under siege.

# Assessing and Renewing Board Governance

*By Pamela R. Knecht, President and CEO, **ACCORD** LIMITED*

A recent report from the National Association of Corporate Directors (NACD) argues that "the pace and scale of change require a *different modus operandi from the board governance model prevalent for the last 100 years*, a new approach involving greater speed of decision making, proactive behaviors, adaptability, and innovation."[1] Its authors also state that "boards must approach their own renewal through the lens of shifting strategic needs to ensure long-term competitive advantage."

Although this report was developed primarily for corporate boards, its findings are just as relevant for not-for-profit healthcare boards that are helping their organizations transition from volume to value. Healthcare boards should revisit their governance models to ensure they are strategic, proactive, innovative, and able to make decisions quickly in the changing environment. And yet, according to The Governance Institute, only 58 percent of boards use the results from a formal self-assessment process to establish board performance improvement goals at least every two years.[2]

## Rationale for Board Assessment

In addition to the rationale described above, there are other reasons

1   *The Report of the NACD Blue Ribbon Commission, Fit for the Future: An Urgent Imperative for Board Leadership*, 2019.
2   Kathryn C. Peisert and Kayla Wagner, *Transform Governance to Transform Healthcare: Boards Need to Move Faster to Facilitate Change*, 2019 Biennial Survey of Hospitals and Healthcare Systems, The Governance Institute.

## Key Takeaways

- Assess the board's governance model to ensure it focuses on strategic issues and acts with appropriate speed.
- Carefully consider the various options for board assessment.
- Determine which population(s) to survey: full board, committees, chairs, and/or individuals.
- Decide on the appropriate scope of the assessment: targeted or comprehensive.
- Choose the best approach: document-based, survey-based, observation-based, interview-based, or a combination.
- Create a board development action plan.

for healthcare boards to assess their governance models now. Governance assessments can help assure external regulators such as the IRS and state attorneys general that the board is appropriately overseeing the community's assets. Issues of concern include executive compensation oversight, regulatory compliance, and conflict-of-interest management. Boards that routinely assess their practices are more often perceived by regulators and legislators to be performing their roles appropriately.

A board assessment can also be a powerful tool for assuring internal stakeholders such as executives, physicians, and directors themselves that the board is doing its job well. A governance assessment can uncover issues impacting the board's effectiveness and efficiency in each of its fiduciary duties and core responsibilities. Those issues may be task-related, such as whether

the capital plan was sufficiently analyzed, or cultural, such as whether the board engages in robust conversations with management while respecting the governance-management distinction.

A board with a reputation for continuously assessing and renewing itself is also more attractive to current and potential board members. Therefore, a board assessment can be a powerful tool for recruiting and retaining highly qualified directors.

## Determine Which Population(s) to Assess

The first step in board renewal is to determine which population(s) to assess: the full board, committees, chairs, or individual directors. The Governance Institute provides tools for assessing each of these populations.

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The most common group to assess is the full board, but boards intent on becoming great also conduct other types of assessments. For instance, asking each finance committee member whether they are receiving needed information in a timely manner can help management better support that committee's review of the annual budget. In turn, the finance committee will be more comfortable providing its recommendations to the full board.

Another group to evaluate is the board's leaders. A chair can substantially impact the effectiveness of the board or committee, both positively and negatively. At one health system, the board chair was so concerned with keeping things "under control and on time" that he routinely cut off important discussions. After a while, board members stopped asking questions or offering suggestions, and it became an ineffective, rubber-stamp board. A chair assessment helped identify these and other issues that were creating a sub-optimal board. As a result, the chair requested individual coaching, which improved his ability to facilitate robust discussions with his peers.

Individual board member assessment is a best practice, but it is not often done. Only 28 percent of boards surveyed by The Governance Institute assess the performance of individual directors. This type of assessment can be very helpful, but it should be pursued carefully so that directors feel supported, not critiqued. The most successful individual assessment processes are undertaken by boards with healthy cultures that are looking to "up their game" regarding performance improvement.

## Decide on the Scope and Scale

The next decision is the scope and scale of the assessment. A typical full board self-assessment instrument is comprehensive; it includes 70–80 questions covering all three fiduciary duties and six core responsibilities of boards. There are also specific questions to ascertain how well the board is functioning. These comprehensive assessments create baselines for measuring the board's performance over time. By contrast, some boards choose a highly targeted approach. For instance, the governance committee for a new health system board carefully selected 12 questions to help them assess whether directors

felt the new board had made progress on its priorities over the first year. This focused assessment had multiple benefits: less board member time was required to complete the assessment and leadership received specific feedback on key issues.

## Choose the Appropriate Approach(es)

Choosing the correct assessment approach is critical, and yet, this step is often neglected. There are four different methods for assessing a board: document-based, survey-based, observation-based, or interview-based. In a document-based approach, the bylaws, charters, and policies are compared to best practices. If the observation approach is used, someone attends a board or committee meeting, silently taking notes on the board's effectiveness (e.g., amount of discussion, agenda adherence, etc.). The survey-based approach uses a written instrument that is most likely administered electronically. An interview-based approach usually entails one-on-one discussions with directors using a common questionnaire.

## Exhibit 1: Pros and Cons of Each Survey Approach

| Evaluation Approach | Pros | Cons |
|---|---|---|
| Document-Based | • Least amount of board time<br>• More objective | • May not provide whole picture<br>• May focus too much on documents<br>• Requires governance expertise |
| Observation-Based | • Identifies cultural issues<br>• Requires little to no board time | • Requires governance expertise |
| Survey-Based | • Allows more board involvement<br>• Enables benchmarking | • Takes more board time<br>• Requires survey expertise (not necessarily governance expertise) |
| Interview-Based | • Provides opportunities to better understand the real issues<br>• Engages board members in issue identification and problem-solving | • Most amount of board time<br>• Requires governance expertise<br>• More subjective |

The correct approach to use is dependent on many factors, such as the desire for national benchmarking, the need to identify cultural issues, the availability of governance expertise, and time. Since each assessment approach has its advantages and disadvantages, the governance committee should carefully choose the one(s) that best meet their board's needs at this time. It may be helpful to utilize more than one approach (e.g., if the challenges the board is facing are difficult to identify). **Exhibit 1** includes some of the pros and cons of the four approaches.

## Prioritize Board Development Action Planning

Regardless of the population, scope, or approach selected, the assessment will only lead to board renewal if it results in a board development plan. The governance committee should ensure that a written action plan is created with a limited number of agreed-upon priority actions, lead responsibility, and due dates, and that the plan is implemented.

By using a disciplined approach to assessing and then renewing its own board governance model, the board can ensure the long-term success of the organization it is responsible for overseeing.