

# Navigating the “New Normal”: The Board’s Role in Resuming Elective Surgeries and Procedures

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**A**cross the country, healthcare providers have struggled during the COVID-19 pandemic in the face of declining revenue and increased expenses.<sup>1</sup> This financial stress has adversely affected almost all entities in the healthcare delivery system—large and small, urban and rural, high Medicaid and low Medicaid, academic and community-based.

A number of states have now eased restrictions that were imposed on elective surgeries and procedures.<sup>2</sup> At least 30 states<sup>3</sup> have allowed, or announced plans to allow, elective surgeries or procedures under certain circumstances.<sup>4</sup> As healthcare providers turn their attention to resuming elective surgeries and procedures, it is important that this entry into the “new normal” be undertaken with care.

1 Sarah Kliff, “[Hospitals Knew How to Make Money. Then Coronavirus Happened.](#)” *The New York Times*, May 15, 2020.

2 American College of Radiology, “[States With Elective Medical Procedures Guidance in Effect.](#)” Updated May 18, 2020.

3 Anuja Vaidya, “[30 States Resuming Elective Surgeries.](#)” *Becker’s Hospital Review*, April 23, 2020.

4 American College of Surgeons, “[COVID-19: Executive Orders by State on Dental, Medical, and Surgical Procedures.](#)” Updated on June 8, 2020.

## Key Board Takeaways

As the majority of states ease restrictions on elective surgeries and other healthcare services and procedures, it is important that healthcare organizations resume these services in a careful manner. While boards generally defer to management’s discrete decisions around this implementation, they should exercise fiduciary responsibilities through an oversight role that ensures timely and thoughtful consideration of the following:

- A centralized and diversified management decision-making team is established that has appropriate subject matter experts, assigns primary responsibility for initial recommendations to appropriate personnel, and coordinates decision making back through the team.
- Legal mandates and non-binding external advisory guidance are being considered and applied by the team, with customization to the organization and appropriate inclusion of risk management and legal personnel.
- An internal and external communications plan is in place for this resumption effort that emphasizes transparency and patient safety.
- Management and governance decisions related to implementation are carefully documented.

Leadership and legal counsel will want to ensure that there is a robust interdisciplinary implementation plan that focuses on the core business and mission pillars of patient safety, worker safety, transparency, and equity in delivery of care. The governing board should be informed of this implementation process on a timely basis and afforded appropriate opportunity to provide fiduciary-level oversight.

## Governing Board Oversight

It will be vitally important for executive leadership to communicate elective surgery and procedure resumption steps to the

organization’s board. While it may not be the case that the board must approve in advance all specific reopening measures, the board should be promptly and thoroughly informed as to how, why, and when elective surgeries and procedures will resume, and should have the chance to ask questions about and test the ramifications of these plans. The way this is carried out will have significant implications for the organization’s risk and compliance profile, finances, community and workforce relations, institutional equity sensitivity, and reputation.

If the board has a COVID-19 working group, that may be a good forum

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for the governance coordination to occur. Otherwise, depending on the size and structure of the board, this coordination might occur with the executive committee or the board as a whole. Whatever governing body is selected should have sufficiently diverse perspectives to assess substantive issues that may be relevant to the resumption of elective surgeries and procedures.

### Key Organization Actions

Healthcare organizations will benefit from adhering to several key actions as they are working to successfully develop and execute on their elective clinical service implementation plan. The board should inquire about and understand how the organization is approaching each of the action items listed below.

#### *1. Establish a Centralized and Interdisciplinary Implementation Team*

To successfully re-establish elective surgeries and procedures, and other non-COVID services, a provider will need a centralized and diversified decision-making team that can assign responsibilities, vet issues, and develop an integrated approach. This team should include not only executive and clinical leadership, but also representatives from human resources, quality assurance, communications, finance and revenue cycle management, information technology, facilities and physical plant, risk management, compliance, and legal.

While the coordinated work of the entire team will be essential, it is important to allow various subject matter experts to take the lead on certain elements of the team's work. This will not only enhance results, but will also mitigate against the "meeting fatigue" that can take hold in healthcare organizations. For example, the human resources representative might want to coordinate with legal and clinical team members, as well as facilities personnel, around proposed workforce safety strategies. Similarly, quality assurance and patient safety personnel, along with clinical leaders, risk management, legal, and institutional equity, might want to develop proposed patient safety and case prioritization protocols for consideration by the entire team.

#### *2. Review and Incorporate Legal Mandates and Advisory Guidance*

Providers must comply with applicable state and local mandates for whether and how to resume elective surgeries and procedures and, in addition, should adhere to Phase I Recommendations issued by the Centers for Medicare & Medicaid Services (CMS).<sup>5</sup> Many providers also might find it beneficial to evaluate and follow

<sup>5</sup> CMS, "[Opening up America Again, Centers for Medicare & Medicaid Services \(CMS\) Recommendations: Re-opening Facilities to Provide Non-emergent Non-COVID-19 Healthcare: Phase I.](#)" April 19, 2020.

some or all guidelines issued by non-governmental bodies, such as the "Roadmap for Resuming Elective Surgery after COVID-19 Pandemic" jointly issued by the American College of Surgeons, the American Hospital Association, the American Society of Anesthesiologists, and the Association of periOperative Registered Nurses,<sup>6</sup> as well as the "Local Resumption of Elective Surgery Guidance" issued by the American College of Surgeons.<sup>7</sup>

While these requirements, recommendations, and guidelines are important, they also tend to be fairly general in scope and will require facility-specific assessment. The board should ensure that this evaluation and adaptation is taking place. Assessment categories include:

- "Gating criteria" to be met before resumption of elective surgeries, such as sustained reduction of new COVID-19 symptoms and cases in the relevant geographic area for at least 14 days; demonstrated adequacy of hospital and ICU beds in the relevant geographic area (ability to treat all hospital patients without crisis care); and availability of robust testing for at-risk healthcare employees. Coordinate with state and local public health officials.
- A facility-specific determination regarding adequacy of ICU and non-ICU beds, surgical and non-surgical staff, PPE, testing, ventilators, medications, anesthetics, and supplies.

<sup>6</sup> American College of Surgeons, American Society of Anesthesiologists, Association of periOperative Registered Nurses, American Hospital Association, "[Joint Statement: Roadmap for Resuming Elective Surgery after COVID-19 Pandemic.](#)" April 17, 2020.

<sup>7</sup> American College of Surgeons, "[Local Resumption of Elective Surgery Guidance.](#)" April 17, 2020.

- The guidelines from the jointly-issued roadmap<sup>8</sup> around development of staff and surgical patient testing policies; adequacy of PPE and training on the use and conservation of PPE; establishment of a prioritization policy committee to address case scheduling and prioritization matters such as previously cancelled cases, objective priority scoring, the needs of certain specialties (such as cancer, organ transplants, cardiac, trauma), and operating room utilization issues; and policies for postponement of surgical scheduling.
- The CMS Phase I Recommendations indicating that providers should: prioritize surgical/procedural care and high-complexity disease management; consider establishing “Non-COVID Care” (NCC) zones; establish routine COVID-19 screening procedures for all entering NCC zones; apply PPE protocols; routinely screen staff, and limit staff working in NCC zones to those NCC areas; apply facility protocols to enhance safety of NCC zones and to facilitate social distancing; and generally prohibit visitors, but with patient-level screening of any visitors who are necessary for care.

Assessment of these materials will allow the implementation team to comply with any legal requirements, and also will afford it the benefit of thinking by organizations issuing non-binding guidance. Evaluation of these guidelines should be updated periodically, and reliance upon them should be documented. This will have potential risk management and

liability mitigation benefits for the provider organization.

Legal counsel should pay particular attention to the emerging and evolving standard of care for elective surgery and procedures in a COVID-19 era, as it develops and is refined. Within this, it will be important to consider facility policy around patient informed consent, and to the exact manner by which surgeries and procedures are being prioritized to ensure compliance with legal, ethical, and mission standards.

The governing board will want to refrain from second-guessing management’s numerous discrete judgment calls around implementation of guidelines in a facility-centric way. However, the board should understand how these decisions may impact the organization’s mission and strategic vision, and where there may be problem areas from a community relations or reputation perspective. A governance-level understanding of how informed consent is being modified, and how legal and risk management considerations are being incorporated into the implementation process, also is important.

### *3. Implement a Thoughtful Communications Plan that Emphasizes Transparency and Safety*

Integral to the successful resumption of elective surgeries and procedures is effective internal, patient, and public communication. Does the workforce know what steps are being taken to protect their safety? In turn, do prospective

surgery patients know the steps that are being taken to protect their safety? Are patients and their representatives being offered a more detailed informed consent form and session that assures true understanding of the benefits and risks of undertaking surgery at this time? Have the surgical informed consent procedures been revised to reflect COVID-19 considerations?

This communications strategy should extend to external groups. Media coverage for the organization will impact reputation and may have an effect on governmental and non-governmental funding opportunities. Similarly, it may be advisable to keep local, state, and federal elected officials apprised of how the organization is doing, and why a safe and responsible resumption of elective surgery and procedures is in the community’s best interest.

The board should inquire about and be advised at a strategic level as to these internal and external communications strategies. Where appropriate, board leadership may be in a position to assist with targeted key communications, for example, with elected officials or business leadership groups.

### *4. Document Management and Governance Decisions Related to Implementation*

The restart of elective surgeries and procedures in the COVID-19 era is unprecedented. As a result, there are not well-established procedures that are accepted as the standard of care or operations. In this uncertain climate, the need for an interdisciplinary team that is in close

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<sup>8</sup> [“Joint Statement: Roadmap for Resuming Elective Surgery after COVID-19 Pandemic,”](#) April 17, 2020.

contact with the organization's governing board, and that applies binding mandates and evaluates non-binding guidance, is compelling. Not only should this team's guidance be thoughtful and well-communicated, but there should be appropriate documentation of its composition, the steps it took, the external guidance it reviewed, the facts it considered, and the reasons for its decisions. Similarly, governance deliberations in connection with this implementation process need to be documented. All of this documentation should be developed in consultation with legal counsel for the organization.

## Conclusion

As healthcare provider organizations across the country resume elective clinical services in the COVID-19 era, it will be important for boards to provide governance oversight of this implementation process. A designated governing body should be in a position to receive timely information about implementation plans and experiences, and should gain an understanding of how this is being organized within the organization, how legal and risk management considerations are being addressed, how internal and external communications are being managed, and how documentation best practices are being applied.

*The Governance Institute thanks Anne Murphy, Partner, Arent Fox LLP, for contributing this article. She can be reached at [anne.murphy@arentfox.com](mailto:anne.murphy@arentfox.com).*

