

Governance Notes

Designed for governance support professionals in the healthcare industry.

The Role of Minutes in the Governance Process

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This article will review the reasons why minutes of board and committee meetings must be maintained. In addition to reviewing the legal requirements for doing so, it will contrast what is considered to be helpful (e.g., “good” or “best practice”) as compared to perfunctory minutes, and explain how a robust process of preparing and regularly reviewing minutes of board and committee meetings will enhance the services provided by board members and managers and, in turn, elevate the organizations they serve.

The Reasons for Minutes

Most state statutes require minutes to be kept. For example, the laws governing non-profit hospitals in New Jersey require that minutes of board meetings be kept and made available for inspection by certain individuals.

In addition to this fundamental legal requirement, board and board committee members must discharge their duties in good faith and with the degree of diligence, care, and skill that ordinary prudent persons would exercise under similar circumstances in like positions. It is well established that properly prepared minutes serve as a paper trail that would be looked at to help determine whether board and committee members have properly discharged their legal obligations.

The Basics

The following are certain basic

concepts to be kept in mind by all parties involved in the process of preparing, reviewing, and adopting minutes of board and committee meetings:

- Minutes must accurately reflect what was presented and discussed at the meeting to which they relate. They must be prepared, reviewed, finalized, and adopted in a timely manner.
- Minutes should follow and be consistent with the meeting agenda, which should have been circulated sufficiently in advance of the meeting to give the participants an opportunity to review and think about the agenda and prepare for the meeting.
- There should be consistency in the format and degree of detail provided in the minutes regarding the items presented and discussed at the meeting, and from meeting to meeting. The same format should be used for the minutes of all the committees within an organization. This will help ensure that items will generally be reported up to the full board with the same degree of depth by each committee, thus preventing a situation in which minutes of one committee could be used to illustrate what is wrong with the minutes of another committee.
- As it is becoming increasingly common for hospitals to become part of a system consisting of multiple hospitals and other healthcare organizations, the parties involved in the minute process should work together to ensure consistency among the minutes of board and committee meetings at each entity throughout the system.
- Minutes should provide evidence that the actions taken by board and committee members were consistent with their fiduciary duties to the organization. By

Key Takeaways

Best practices for preparing, reviewing, and adopting minutes of board and committee meetings include ensuring that minutes:

- Accurately reflect what was presented and discussed at the meeting.
- Follow what was included on the meeting agenda.
- Are always consistent from meeting to meeting, and that the same format is used for all committees and boards.
- Provide evidence that the actions taken were consistent with board and committee members’ fiduciary duties to the organization.
- Are periodically reviewed to not only ensure that the board has done its job but that it has taken extra steps to elevate the organization and help it fulfill and advance its mission.

By reviewing the minutes of your board and committee meetings and the charters under which these groups act, you will be able to easily identify deficiencies in the work being done and create opportunities to effectuate positive change within your organization.

way of example, minutes should make clear that members had sufficient information and were well informed of the topics on which they took action. Also, any potential conflicts of interest should be noted and it needs to be clear that the actions of each individual were taken wearing their fiduciary hat and reflected their undivided loyalty to the organization, notwithstanding any dual roles in which they may serve. This is an everyday issue that needs to be kept in mind when action is taken by a board member who is also an officer of the organization, an affiliated physician, or a community member who also provides goods or services to the organization.

- The organization's charter, mission statement, strategic plan, and other governing documents must always be kept in mind when action is taken on any issue. For example, if a hospital's mission is to provide high-quality, compassionate care within its service area without regard to the ability of a patient to pay for it, the board's oversight, as reflected in the minutes, needs to demonstrate that it takes credentialing seriously and only credentials those clinicians capable of providing services at a level consistent with the organization's mission. Similarly, the minutes should reflect the fact that the board is cognizant of the organization's mission when it goes through the budgeting process and that it considered the ability of the organization to generate and maintain the

financial resources needed to fulfill its mission today, and for years to come.

With this in mind, what constitutes "good" minutes versus "bad" minutes? Adhering to certain basic guidelines, including those discussed above, will help ensure that your organization can, at a minimum, "check the box" knowing that it has a process in place to ensure that it has kept minutes as required by law. However, following these guidelines by themselves, regardless of how much information is reported through the minutes and whether long-form or short-form minutes are maintained, is not enough to show that your organization has good minutes. As discussed below, good minutes are those that not only memorialize what took place but also provide evidence of the thoughtful and deliberate fiduciary actions taken to help the organization fulfill and advance its mission.

The Role of Minutes in Elevating an Organization

Instead of minutes being quickly reviewed, approved, and filed away to hopefully never be seen again, they should be periodically reviewed by all involved parties (i.e., the scrivener, the board, and management) to not only ensure that the board has done its job but that it has taken the extra steps as part of the governance process to elevate the organization and help it fulfill and advance its mission.

The following are just a few examples of questions to ask about your governance process, which can be

easily answered by reviewing the minutes of your organization's board and committee meetings:

- Does your board have the same committees as it did three, five, and 10 years ago? If yes, do they meet with the same frequency and operate pursuant to the same charters as they did three, five, and 10 years ago? If you answer each of these questions in the affirmative, your minutes may be fine, but your governance process is likely to be stale and deficient. As hospital fiduciaries, board and committee members are responsible from a governance perspective for the quality, safety, and financial viability of the organizations they serve in one of our nation's most rapidly changing and challenging industries. Attempting to manage this process utilizing an old playbook that predates population health and the development of payment models built on risk and on keeping a population healthy rather than exclusively on a fee-for-service payment model, is not likely to result in good governance.
- If your hospital is an IRC 501(c)(3) organization, does it have a committee charged with ensuring that it is participating in, and providing services identified by, a community health needs assessment as required by Congress? If your board and committee charters have not been updated in the last 10 years, this cannot be the case.
- Do you have a committee that is responsible for making sure "best practices" of governance are adhered to? Board members cannot blindly look to management to lead them to the promised land of good governance. Minutes and committee charters must require and support the fact that board members are well informed of trends in the industry and know enough about their own organization's position in

a competitive market place to enable them to evaluate not only how their organization is performing today but how it is positioned for the future.

- Does your board have a committee that is responsible for measuring the performance of the organization and its leaders under models that are evolving on a regular basis? In the alternative, is it incentivizing its CEO and senior management team under the same performance models that were being used several years ago? If the answer to this last question is yes, the minutes of your compensation committee and board meetings may look fine, but your board is likely behind

the times and not governing as it should to help make your organization great.

The above questions merely scratch the surface of the types of questions all board members and others involved in the governance process should be asking. By reviewing the minutes of your board and committee meetings and the charters under which these groups act, you will be able to easily identify deficiencies in the work being done and create opportunities to effectuate positive change within your organization.

Conclusion

For a variety of reasons, including the repetitive nature of the minute

preparation process and the time constraints of those individuals charged with reviewing and approving them, the maintenance of minutes is often viewed as a formality, which does not receive the attention it deserves. If this describes how minutes are handled within your organization, you should reassess their role and consider how they can and should be used as an important tool in assessing, updating, and upgrading your governance process. By doing so, you will not only have legally compliant minutes, but you will have enhanced their value as an important governance tool within your organization.

The Governance Institute thanks Thomas C. Senter, Esq., Partner in Greenbaum, Rowe, Smith & Davis LLP, for contributing this article. He regularly advises organizations, their officers, directors, and trustees on fiduciary and governance issues. He serves as Chair of the Board of Trustees of Englewood Hospital, Englewood, New Jersey and its parent, Englewood Health System. His views expressed in this article are solely his own and should not be attributed to his law firm or to Englewood Hospital or Englewood Health System. He can be reached at tsenter@greenbaumlaw.com.

