E-Briefings

VOLUME 19 NO. 5 SEPTEMBER 2022

THE GOVERNANCE INSTITUTE

A SERVICE OF nrc HEALTH

Emerging Governance Issues for Board Consideration

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

What's Inside:

→ Emerging Governance Issues for Board Consideration

→ Leading Healthcare Teams Well

→ Reframing Hospitals' Role in Disaster Preparedness: Words Matter

A combination of legal developments, trends in board practices, business and strategic pressures, and social/cultural themes are presenting themselves for consideration by the hospital and health system governing board. Individually and collectively, these developments reflect the continuing evolution of the not-for-profit hospital and health system governance model towards an enhanced level of engagement, as the board's role becomes more complex and demanding.[1] This article highlights 10 of these emerging governance issues for board consideration.

1. The Board/Management Dynamic

After a period of pandemic-driven deference to management, boards are being prompted by strategic challenges and operational concerns to engage more fully in oversight and decision making. The law's expectation of the scope of their duties is similarly expanding.

Ultimately, the ability of the board and management to effectively collaborate in the new environment is grounded in something of a "bargain"; i.e., the board must be sufficiently engaged and attentive in order to be a resource to management, and management must be sufficiently aware, and respectful, of the board's evolving governance responsibilities.

1 Lola Butcher, "More Not-for-Profit Health Systems Opt to Pay Board Members," *HFM Magazine*, Summer 2022.

© The Governance Institute | 877.712.8778 | GovernanceInstitute.com

2. Expectations of Director Performance

As the duties of the board become more complex and demanding, the quality of board performance becomes a more significant concern. Effective hospital and health system boards cannot "carry" directors who are disengaged from the deliberative process or are otherwise not performing their duties.

The National Association of Corporate Directors (NACD) has noted that "[T]he concept of directorship is not to serve as long as you want to; it is to serve as long as you're needed."[2] As defined by NACD and others, board evaluative processes are grounded in an understanding amongst all directors of why an individual was appointed, and of the board's expectations of performance. From the beginning of board service,

→ Key Board Takeaways

- Is there a positive and productive board–management dynamic? Is there clarity on the separate roles of governance and management?
- Are individual directors devoting sufficient time and energy to the performance of their duties?
- Is the board or appropriate committee efficiently reviewing and making recommendations for the strategic plan, monitoring implementation of strategic initiatives, and ensuring these initiatives align with the organization's mission?
- When recruiting new board members, does the board have specific expectations for desired experience, background, and diversity? Has the board evaluated the most appropriate size of the board and its key committees?
- Are meaningful turnover and refreshment techniques being implemented to ensure the board is appropriately diverse and is periodically infused with "new blood"?
- Is there a well-developed committee structure with clearly understood responsibilities?

2 NACD, *The Healthy Departure: Considerations for Effective Off-Boarding*, May 17, 2020.

© The Governance Institute | 877.712.8778 | GovernanceInstitute.com

directors should be made aware of the potential that they may be asked to leave the board before their term has formally concluded.

3. The Board's Strategic Focus

The continuing, multi-faceted strategic evolution of the health system is dramatically affecting in general the long-term vision for the healthcare industry and for how care is and will be delivered to the community, and for the acute care inpatient hospital in particular. This places a much greater emphasis on the board's responsibilities with respect to the strategic plan and long-term sustainability.

In this regard, the board is expected to have consequential input into the organization's long-term strategy. It should approve strategic plans as developed by management, and regularly evaluate implementation and management of strategic initiatives for their consistency with such plans and with the charitable mission of the overall organization.

4. Broader Scope of Corporate Purposes

The board must recognize and give meaningful consideration to the application of corporate social responsibility principles as they may apply to the mission and purposes of the health system. This may, in particular, prompt consideration of whether the focus of the mission and purpose should be on a larger scope of constituents—i.e., beyond the healthcare consumer to include employees, vendors, and the communities in which the hospital or health system operates.

5. The Most Effective Board Size

There is no "best practice" when it comes to the appropriate size of the hospital/health system board. As the IRS has noted, board size should be designed in order to effectively make sure that the organization obeys applicable laws, safeguards its charitable assets, and furthers its charitable purposes.

The law's perspective on the increasing scope of board duties and responsibilities does not necessarily translate into the need for a larger board. Indeed, very large boards may have a more difficult time establishing quorum and otherwise achieving proper attendance levels, and efficiently pursuing the board's meeting agenda. Decisions on proper board size should focus in large part on the quality of directors, their attentiveness, and the efficiency with which they exercise their duties.

© The Governance Institute | 877.712.8778 | GovernanceInstitute.com

6. The Most Effective Board Composition

The board and its governance committee are challenged to make even more thoughtful decisions with respect to the composition of the board and the qualifications of incoming directors. There is no clear best practice as to whether a "competency-based board" is preferable (and more effective) than a board composed of directors from a highly diverse spectrum of experiences. Boards are also being challenged to preserve and enhance gender and ethnicity-based diversity gains.

Certainly, some percentage of the board should be composed of directors with industry experience, and with knowledge in areas key to hospital and health system operations. Yet data gleaned from research conducted by The Conference Board suggests the boards should be careful not to add directors with functional expertise where the result is decreasing the number of directors with broad business strategy experience.

7. Director Turnover and Refreshment

A very clear challenge to the director nominating process is the need to create new openings for diverse directors, and for directors with unique and valued perspectives and skills. Data compiled by The Conference Board suggests that the level of annual board turnover during the last several years ranges from 9 to 11 percent, a rate which is thought to be insufficient to achieve desired diversification.[3]

To overcome this challenge, boards will be encouraged to apply the full range of refreshment tools, from the mandatory (e.g., term limits, age-based retirement requirements, change-of-status requirements, limits on outside board service) to the consultative (e.g., full board and individual director evaluations and off-boarding measures). Cultural changes that identify the potential for removal short of end-of-term may also contribute.

8. Lines of Authority

Given the increasingly complex oversight challenges and business decisions thrust on hospital and health system leadership, it is important for there to be clear lines of authority between boards and executive management. While it is difficult to anticipate

3 Merel Spierings, *Board Refreshment and Evaluations*, The Conference Board, 2022.

the universe of issues that require leadership attention there is value in reaching some form of board/management understanding as to which matters:

- Can be executed solely by CEO decision
- Require board ratification of the CEO decision before becoming effective
- Are solely the responsibility of the board to decide, based in part on management recommendation

9. Committee Structure

Boards are well advised to leverage their effectiveness and engagement through the effective use of board-level committees, whether with delegated powers or advisory in nature. A well-developed committee structure with clearly understood responsibilities is a recognized best practice.

In that regard, it is useful for boards to periodically identify examples of optimal committee composition, structure, and purpose (as well as state law), and compare them against existing practices. Such a periodic evaluation may identify possible enhancements in committee formation, delegation, and practice that could support the ability of the board to effectively fulfill its responsibilities.

10. Information Flow

As the board and its committees confront more complex decision making and oversight duties, their ability to be fully informed on matters coming to their attention is critical. This suggests agreement between management and the board on what information and educational material is to be provided, how it is to be provided, and the frequency of its provision.

A 2021 Delaware Chancery Court decision strongly suggests that to assure informed oversight and decision-making practices, the board and management should identify those specific enterprise risks that are "mission specific" to the organization, and mandate formal, scheduled management-to-board reporting on those risks.

Summary

The post-pandemic environment is proving to be one of intense operational, financial, and strategic challenges for hospital and health system boards. These challenges are arising simultaneously with an evolving perception under case law of enhanced board

© The Governance Institute | 877.712.8778 | GovernanceInstitute.com

oversight responsibilities. Such an environment can be more effectively responded to by corporate governance through a self-evaluation of its structural, composition, and operating practices and implementation of identified improvements.

The Governance Institute thanks Michael W. Peregrine, Partner, McDermott Will & Emery, for contributing this article. He can be reached at mperegrine@mwe.com.

© The Governance Institute | 877.712.8778 | GovernanceInstitute.com

Leading Healthcare Teams Well

By **Tammie McMann Brailsford**, Principal and Executive Coach, *TheBrailsfordGroup/LeadWell*

There has never been a more challenging time to be a healthcare leader or member of a governing board than during the COVID-19 pandemic. Quality metrics are down, and costs continue to climb. But of greater concern, after two years of slogging through the pandemic, the pressures and dangers faced by clinical teams make leadership challenges pale by comparison.

What our teams need most right now is to heal and restore. And at the same time, what our organizations need is to rebuild quality and regain financial resilience. But if leaders overlook our teams' urgent needs for restoration and rush headlong into financial recovery, we will pay a price.

Since 2020, the indicators we watch to measure quality, financial performance, and patient experience have been profoundly impacted. So too has employee well-being. It will take intentional leadership and less reliance on our traditional responses to crises to prioritize correctly and lead our teams well.

Clinical Quality

In many cases, quality reporting was suspended during the initial stages of the pandemic in favor of surge preparation—a correct decision but one that makes accurately measuring the overall clinical quality impacts of the pandemic difficult to ascertain. What we do know from the CDC's National Healthcare Safety Network is the incidence of central line-associated bloodstream infections, catheter-associated urinary tract infections, ventilator-associated events, and methicillin-resistant staph aureus bacteremia are all significantly higher during the COVID pandemic. Length of stay and mortality rates were also impacted.

Expense Indicators

Expenses and labor costs are trending sharply upwards:[1]

- Hospital expenses per patient are up 19.1 percent over pre-pandemic levels

1 Kaufman Hall, *National Hospital Flash Report*, Accessed July/August 2022.

© The Governance Institute | 877.712.8778 | GovernanceInstitute.com

- Labor costs are up 37 percent
- Traveling nurses make up 38.6 percent of hospital staff, up from 4.7 percent pre-pandemic
- Drug expenses have increased by 36.9 percent and supply costs are up 20.6 percent
- 22 percent of hospitals report staffing shortages
- 62 percent of hospitals report RN vacancy rates of greater than 7.5 percent
- The national average RN turnover rate is 27.1 percent

Employee Well-Being

While healthcare's financial and quality pressures are cause for concern, healthcare teams are depleted, overwhelmed, and short-staffed. Many of our routines have been challenged and relationships have been strained. We have lost numerous colleagues during the pandemic—some to the virus and others to the great resignation. We need to prioritize our teams' well-being before we double down on financial performance.

According to the Kaiser Family Foundation:[2]

- 62 percent of frontline healthcare workers say that stress has affected their mental health.
- 49 percent of healthcare employees say the pandemic has affected their physical health.
- Alcohol and drug use has increased by 16 percent.

With all these pressures stacking up and after two years of running on adrenaline and nerve, how do executive leaders and board members prioritize people and help teams recalibrate? And how do those same leaders resist the temptation to rush headlong to prioritize financial concerns above all else?

Over the decades as a hospital CEO and health system COO, I have led the charge to reduce costs and improve financial performance. I have attended to other measures too: quality, employee engagement, and patient experience. But most often, it is financial performance that is seen as the most prescient indicator of an organization's future health; so economic indicators naturally create a sense of urgency among senior leaders and governing boards.

For leaders, it's a sensitive balance to improve financial and quality performance while also supporting our teams. We recognize that we can't achieve those financial

2 Ashley Kirzinger, et al., *KFF/The Washington Post Frontline Health Care Workers*, March 2021.

© The Governance Institute | 877.712.8778 | GovernanceInstitute.com

numbers without fully engaged employees, high clinical standards, and lean operating systems. But at the same time, we turn to patient procedural volume, payer mix, productivity, and collections every day as a proxy for our success when we are reporting to our governing boards.

But in the wake of the pandemic, our teams simply don't have the capacity to dig any deeper as leadership takes measures to address financial performance. With all indicators showing that healthcare workers' mental and physical health has been seriously impacted by the pandemic, it's critical that governing boards direct senior leaders to reprioritize and put our institutions' human capital first.

→ Key Board Takeaways

Addressing the physical and mental health of healthcare workers needs to be given top priority. It's time for boards and leaders to create new norms and find fresh indicators of organizational health. Start by measuring the health and well-being of your teams first. Here are some questions boards can ask leadership to address:

- Has your organization initiated a system to track your team's well-being?
- Have frontline caregivers been asked for their ideas about milestones for recovery of their overall well-being?
- Have systems of compensation, work-life integration, and career support been evaluated and modernized to meet the moment, based on input from those who know what they need most?
- Has everyone had an opportunity to define and do the one thing that they feel would be most restorative for them?
- Have lost team members been honored?
- Have healthcare team members who have left your organization as part of the great resignation been contacted, thanked for their contribution to the organization, and offered an invitation to return home?
- How is leadership recognizing the real or perceived inequity that exists between those who can work remotely and those who carry the heavy burden of clinical care every day?

Any one of these questions, or many others, will provide a quantifiable glimpse into the well-being of your teams, inspiration to prioritize your efforts, and a means to measure and track progress.

© The Governance Institute | 877.712.8778 | GovernanceInstitute.com

Our Window of Opportunity

Fortunately, we have a window of time to give employee well-being the attention it urgently needs. Fitch is forecasting that hospitals and health systems will be challenged to keep revenues on pace with escalating operating expenses in 2022, negatively impacting operating margins. However, they are also reporting that these losses will be offset by currently strong balance sheets supported by strong investment performance and early pandemic federal funding support. Thus, Fitch does not foresee any significant deterioration that would trigger downward rating momentum. This gives hospital and health system leaders an opportunity to attend to regenerating cultures and the well-being of their teams.

In healthcare, we trust our employees with our patients' lives every day, so we can trust them to tell us what they need and when they are also ready to prioritize organizational financial health. Balancing financial well-being and employee well-being is not an either-or proposition, but when we are juggling competing financial and well-being challenges, fiscal concerns will win out unless we are very clear about our priorities.

First and foremost, at this critical moment, healthcare board members need to ask leadership about employee well-being. Take this opportunity to prioritize healthcare workers. Ultimately, it's the right thing for our patients, and will help positively impact the bottom line. The financial challenges to our industry are real and must be addressed—but we have time to do that. Better to address fiscal challenges with healthy, engaged staff who feel cared for and cared about.

Healthcare organizations have been transformed by the pandemic. It's time now to intentionally create a new and better normal together. To do that, we need healthcare cultures that are steeped in well-being and built on healthy relationships.

The Governance Institute thanks Tammie McMann Brailsford, Principal and Executive Coach, TheBrailsfordGroup/LeadWell, for contributing this article. She can be reached at tmbrailsford123@gmail.com.

Reframing Hospitals' Role in Disaster Preparedness: Words Matter

By **Archelle Georgiou, M.D.**, Board Chair, *Children's Hospitals and Clinics of Minnesota*, and Chief Health Officer, *Starkey Hearing Technologies*

Since the start of the COVID-19 pandemic, Children's Hospitals and Clinics of Minnesota managed 1,391 admissions of patients testing positive for COVID-19, conducted 175,503 COVID-19 tests, and administered 28,042 vaccine doses. The hospital coordinated these activities through a COVID Command Center that was launched in February 2020 and maintained for over 16 months.[1]

This extraordinary level of activity is not unique to Children's Hospitals and Clinics of Minnesota. It was replicated in virtually every hospital across the country to manage the 5.2 million patients admitted with COVID-19.[2] Hospitals secured supplemental staffing, identified space to accommodate excess capacity, and procured personal protective equipment. They quickly scaled telehealth capabilities, developed new care models, opened phone hotlines and pop-up clinics, implemented community outreach services, and continuously updated online information to keep their communities informed. Amidst the chaos, they re-engineered their data collection processes to comply with new federal and state reporting requirements.

Hospital teams worked tirelessly to design solutions—almost overnight. But, while efforts were nothing short of valiant, they were reactive. In August 2020, the U.S. Government Accountability Office (GAO) published a report of hospitals' medical surge preparedness. Executives from multiple hospitals stated that training and simulation exercises for disaster preparedness were insufficient to prepare them for the realities of the public health response needed for the COVID-19 pandemic.[3] They had not properly prepared for a global pandemic that introduced unprecedented

1 Internal data, Children's Hospitals and Clinics of Minnesota, August 2022.
2 CDC, "COVID Data Tracker," Accessed August 25, 2022.
3 *Public Health Preparedness: COVID-19 Medical Surge Experiences and Related HHS Efforts*, U.S. Government Accountability Office, August 2022.

© The Governance Institute | 877.712.8778 | GovernanceInstitute.com

staffing shortages and supply chain challenges—all made worse by inconsistent communication from federal and state officials.

However, another potential reason for lack of preparedness is that most hospitals are in the private sector and, therefore, don't identify as being an essential part of the public health system. But they are. In fact, the nation's response to COVID-19 was *only* possible with private sector engagement, with thousands of private sector companies pivoting to participate in the public health response. For example:

- 3M produced 4.3 billion masks.
- Medtronic manufactured 25,000 ventilators and offered open access to their ventilator design, which was downloaded 90,000 times.
- Pfizer, Moderna, and J&J/Janssen manufactured over 3.7 billion vaccine doses for global distribution.
- United Parcel Service (UPS) and Federal Express delivered 737 million vaccine doses in the U.S.
- CVS and Walgreens conducted 76 million tests and administered 114 million vaccinations.
- Starkey Hearing Technologies partnered with a local company to produce 3 million face shields.
- Small and large employers, nationwide, implemented protocols for protecting and managing the health of employees in the workplace.

→ Key Board Takeaways:

- **Educate the board.** Ensure board members understand the difference between public health and the role of public health agencies.
- **Edit the scope of the audit and compliance committee.** Revise committee charter language to reflect oversight for public health preparedness.
- **Establish public health as a strategic initiative.** Develop a comprehensive plan designed to address the key elements of public health.
- **Explore "coop-etition."** Encourage collaboration with local hospitals to coordinate medical surge contingency planning activities.
- **Exchange information with public health agencies.** Engage with local officials to establish the hospital as a true partner in public health planning.

© The Governance Institute | 877.712.8778 | GovernanceInstitute.com

Public health is formally defined as "the science and art of preventing disease, prolonging life, and promoting health through the organized efforts and informed choices of society, organizations, public and private communities, and individuals."[4] Based on this definition, private and public sector companies as well as healthcare and non-healthcare companies are all participants in the public healthcare system. And, for all hospitals—private and public—public health is at the core of their mission.

Now more than ever, hospital boards and senior leaders know what it really takes to effectively respond as strong public health partners. Good governance applies the lessons learned over the last several years to avoid being overstretched by the next pandemic or public health crisis—which is inevitable. But there is also a larger strategic opportunity beyond just expecting more robust disaster preparedness. Hospitals can leverage the knowledge, experience, and infrastructure they have built to reimagine themselves as the public health partners that they are. It's time to proudly own this responsibility and call it what it is.

Adopting public health planning as a strategic imperative will bolster institutional resilience when faced with future emergencies. More importantly, in the absence of periodic infectious disease outbreaks, the resources dedicated to public health preparedness can be deployed to focus on the very real threats posed by public health concerns such as heart disease, obesity, and cancer. Boards may want to consider the following ideas to advance their hospitals' value and positioning as an essential partner in public health:

1. **Educate the board.** Address the widespread misperception about the definition of public health by offering educational sessions that distinguish between public health and the role of public health agencies. Dispel the myth that responsibility for public health is limited to governmental or public sector entities.
2. **Edit the scope of the audit and compliance committee.** Revise the language in the committee charter from "oversight of disaster/emergency preparedness" to "oversight of public health preparedness." Words matter and are powerful in inspiring a mindset shift.
3. **Establish public health as a strategic initiative.** Hold the executive team accountable for developing a comprehensive plan to address the key elements of public health, which include:[5]
    - Assessing, monitoring, investigating, and addressing population health issues.

4 CDC, "Introduction to Public Health," Accessed August 28, 2022.
5 Adapted from CDC's "10 Essential Public Health Services."

© The Governance Institute | 877.712.8778 | GovernanceInstitute.com

- Collecting and maintaining data that supports research for new insights and innovative solutions to health problems.
- Communicating and educating the community about factors that influence and improve health.
- Establishing community partnerships and relationships.
- Ensuring that public health services are designed to enable equitable access.
- Engaging in legal, regulatory, and advocacy activities focused on improving and protecting the public's health.

4. **Explore "coop-etition."** Encourage the CEO to collaborate with their local counterparts and explore sharing medical surge contingency planning activities. This may alleviate the risk of capacity issues and help coordinate care in future surges.
5. **Exchange information with public health agencies.** Move beyond "meet and greet" relationships with public health officials. Sharing details about the hospital's public health planning activities will establish the hospital as a true partner and sets the stage for being invited to proactively participate in public health agency planning.

Effective hospital governance is centered around establishing the strategic direction of the institution, ensuring the delivery of high-quality care, and maintaining financial stability. Hospital boards must recognize that COVID-19 is transient but the need for public health is permanent.

The Governance Institute thanks Archelle Georgiou, M.D., Board Chair, Children's Hospitals and Clinics of Minnesota, and Chief Health Officer, Starkey Hearing Technologies, for contributing this article. She can be reached at archelle@archellemd.com.